



**CITY OF LODI  
COUNCIL COMMUNICATION**

**AGENDA TITLE:** Adopt Resolutions Approving Revised Deferred Compensation Plan Documents for Nationwide Retirement Solutions and The Hartford

**MEETING DATE:** December 21, 2011

**PREPARED BY:** Deputy City Manager

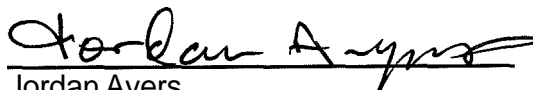
**RECOMMENDED ACTION:** Adopt resolutions approving revised deferred compensation plan documents for Nationwide Retirement Solutions and The Hartford.

**BACKGROUND INFORMATION:** The City sponsors deferred compensation plans for City employees through Nationwide Retirement Solutions, The Hartford and ICMA Retirement Corporation. Nationwide Retirement Solutions and The Hartford have provided revised plan documents that incorporate a number of changes in federal law that need to be brought into the plan documents, such as the Pension Protection Act of 2006, the Heroes Earnings Assistance Act of 2008 and the Worker, Retiree and Employer Recovery Act of 2008. Staff has been advised that the new documents must be approved by December 31, 2011 for our plans with these providers to remain compliant with the Internal Revenue Services (IRS) rules and regulations.

Staff has contacted ICMA Retirement Solutions and been advised that they will bring forward revised plan documents at a later date.

**FISCAL IMPACT:** Compliance with IRS rules and regulations is critical to maintaining the tax-deferred status of these plans.

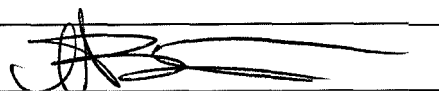
**FUNDING AVAILABLE:** Not applicable.

  
Jordan Ayers  
Deputy City Manager

JA/ja

Attachments

APPROVED:

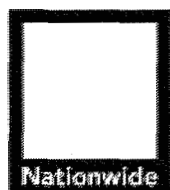
  
Konradt Bartlam, City Manager

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*(Name of Employer)*

**DEFERRED COMPENSATION PLAN FOR PUBLIC EMPLOYEES  
457 GOVERNMENTAL PLAN AND TRUST**

Document provided as a courtesy of:



**Nationwide<sup>®</sup>**  
**Retirement Solutions**

*On Your Side™*

## 457 GOVERNMENTAL PLAN AND TRUST

The Employer adopts this 457 Governmental Plan and Trust. The Plan is intended to be an “eligible deferred compensation plan” as defined in Code §457(b) of the Internal Revenue Code of 1986 (“Eligible 457 Plan”). The Plan consists of the provisions set forth in this plan document and is applicable to the Employer and each Employee who elects to participate in the Plan. If the Employer adopts this Plan as a restated Plan in substitution for, and in amendment of, an existing plan, the provisions of this Plan, as a restated Plan, apply solely to an Employee on or after the execution of this Plan. The Plan is effective as to each Employee upon the date he/she becomes a Participant by entering into and filing with the Employer or the Administrative Services Provider a Participation Agreement or an Acknowledgement Form/Card.

### ARTICLE I DEFINITIONS

1.01 **“Account”** means the separate Account(s) which the Administrative Services Provider or the Trustee maintains under the Plan for a Participant’s Deferred Compensation. The Administrative Services Provider or Trustee may establish separate Accounts for multiple Beneficiaries of a Participant to facilitate required minimum distributions under Section 4.03 based on each Beneficiary’s life expectancy.

1.02 **“Accounting Date”** means the last day of the Plan Year.

1.03 **“Acknowledgement Form/Card”** means the application to the Administrative Services Provider to participate in the Plan when the Plan is a Social Security replacement plan.

1.04 **“Administrative Services Provider”** means Nationwide Retirement Solutions, Inc. which acts as the third party administrative services provider appointed by the Employer to carry out nondiscretionary administrative functions for the Plan.

1.05 **“Beneficiary”** means a person who the Plan or a Participant designates and who is or may become entitled to a Participant’s Account upon the Participant’s death. A Beneficiary who becomes entitled to a benefit under the Plan remains a Beneficiary under the Plan until the Beneficiary has received full distribution of his/her Plan benefit. A Beneficiary’s right to (and the Administrative Services Provider’s or a Trustee’s duty to provide to the Beneficiary) information or data concerning the Plan does not arise until the Beneficiary first becomes entitled to receive a benefit under the Plan.

1.06 **“Code”** means the Internal Revenue Code of 1986, as amended.

1.07 **“Compensation”** for purposes of allocating Deferral Contributions means the employee’s wages, salaries, fees for professional services, and other amounts received without regard to whether or not an amount is paid in cash for personal services actually rendered in the course of employment with the Employer, to the extent that the amounts are includible in gross income (or to the extent amount would have been received and includible in gross income but for an election under Code §§ 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), and 457(b), including an election to defer Compensation under Article III. See Section 1.16 as to Compensation for an Independent Contractor. Compensation also includes any amount that the Internal Revenue Service in published guidance declares to constitute compensation for purposes of an Eligible 457 Plan.

**(A) Elective Contributions.** Compensation under Section 1.07 includes Elective Contributions. “Elective Contributions” are amounts excludible from the Employee’s gross income under Code §§125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 403(b), 408(p) or 457, and contributed by the Employer, at the Employee’s election, to a cafeteria plan, a qualified transportation fringe benefit plan, a 401(k) arrangement, a SARSEP, a tax-sheltered annuity, a SIMPLE plan or a Code § 457 plan.

**(B) Differential wage payments.** For years beginning after December 31, 2008, (i) an individual receiving a differential wage payment, as defined by Code § 3401(h)(2), shall be treated as an employee of the employer making the payment; (ii) the differential wage payment shall be treated as compensation; and (iii) the plan will not be treated as failing to meet the requirements of any provision described in Code §414(u)(1)(C) by reason of any contribution or benefit which is based on the differential wage payment.

1.08 **“Deferral Contributions”** means Salary Reduction Contributions, Nonelective Contributions and Matching Contributions. The Employer or the Administrative Services Provider (if applicable) in applying the Code § 457(b) limit will take into account Deferral Contributions in the Taxable Year in which deferred. The Employer or Administrative Services Provider (if applicable) in determining the amount of a Participant’s Deferral Contributions disregards the net income, gain and loss attributable to Deferral Contributions.

1.09 **“Deferred Compensation”** means as to a Participant the amount of Deferral Contributions,

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Rollover Contributions and Transfers adjusted for allocable net income, gain or loss, in the Participant's Account.

1.10 **"Effective Date"** of this Plan is the date indicated on the execution line unless the Code, Treasury regulations, or other applicable guidance provides otherwise.

1.11 **"Employee"** means an individual who provides services for the Employer, as a common law employee of the Employer. See Section 1.16 regarding potential treatment of an Independent Contractor as an Employee.

1.12 **"Employer"** means an employer who adopts this Plan by executing the Plan.

1.13 **"Employer Contribution"** means Nonelective Contributions or Matching Contributions.

1.14 **"Excess Deferrals"** means Deferral Contributions to an Eligible 457 Plan for a Participant that exceed the Taxable Year maximum limitation of Code §§457(b) and (e)(18).

1.15 **"Includible Compensation"** means, for the Employee's Taxable Year, the Employee's total Compensation within the meaning of Code § 415(c)(3) paid to an Employee for services rendered to the Employer. Includible Compensation includes Deferral Contributions under the Plan, compensation deferred under any other plan described in Code §457, and any amount excludible from the Employee's gross income under Code §§401(k), 403(b), 125 or 132(f)(4) or any other amount excludible from the Employee's gross income for Federal income tax purposes. The Employer will determine Includible Compensation without regard to community property laws.

1.16 **"Independent Contractor"** means any individual who performs service for the Employer and who the Employer does not treat as an Employee or a Leased Employee. The Employer may permit Independent Contractors to participate in the Plan. To the extent that the Employer permits Independent Contractor participation, references to Employee in the Plan include Independent Contractors and Compensation means the amounts the Employer pays to the Independent Contractor for services.

1.17 **"Leased Employee"** means an Employee within the meaning of Code § 414(n).

1.18 **"Matching Contribution"** means an Employer fixed or discretionary contribution made or forfeiture allocated on account of Salary Reduction Contributions. The Employer may provide for matching contributions.

1.19 **"Nonelective Contribution"** means an Employer fixed or discretionary contribution not made as a result of a Participation Agreement and which is not a Matching Contribution. The Employer may provide for nonelective contributions.

1.20 **"Normal Retirement Age"** means the age designated by the Participant unless the Employer designates in writing a Normal Retirement Age. The Normal Retirement Age designated by the Participant or Employer shall be no earlier than age 65 or the age at which Participants have the right to retire and receive, under the basic defined benefit pension plan of the Employer (or a money purchase plan in which the Participant also participates if the Participant is not eligible to participate in a defined benefit plan), immediate retirement benefits without actuarial or similar reduction because of retirement before some later specified age. The Normal Retirement Age also shall not exceed age 70%.

*Special Rule for Eligible Plans of Qualified Police or Firefighters.* A Participant who is a qualified police officer or firefighter as defined under Code §415(b)(2)(H)(ii)(I) may designate a Normal Retirement Age between age 40 and age 70 %.

1.21 **"Participant"** is an Employee who elects to participate in the Plan in accordance with the provisions of Section 2.01 or an individual who has previously deferred Compensation under the Plan by a Participation Agreement and has not received a complete distribution of his/her Account.

1.22 **"Participation Agreement"** means the agreement to enroll and participate in the Plan that is completed by the Participant and provided to the Administrative Services Provider. The Participation Agreement is the agreement, by which the Employer reduces the Participant's Compensation for contribution to the Participant's Account.

1.23 **"Plan"** means the 457 plan established or continued by the Employer in the form of this Plan and (if applicable) Trust Agreement. All section references within the Plan are Plan section references unless the context clearly indicates otherwise.

1.24 **"Plan Entry Date"** means the date on which an Employee completes and files a Participation Agreement with the Administrative Services Provider.

1.25 **"Plan Year"** means the calendar year.

1.26 **"Rollover Contribution"** means the amount of cash or property which an eligible retirement plan described in Code §402(c)(8)(B) distributes to an eligible Employee or to a Participant in an eligible rollover distribution under Code §402(c)(4) and which the eligible Employee or Participant transfers directly or indirectly to an

Eligible 457 Plan. A Rollover Contribution includes net income, gain or loss attributable to the Rollover Contribution. A Rollover Contribution excludes after-tax Employee contributions, as adjusted for net income, gain or loss.

1.27 **“Salary Reduction Contribution”** means a contribution the Employer makes to the Plan pursuant to a Participation Agreement.

1.28 **“Service”** means any period of time the Employee is in the employ of the Employer. In the case of an Independent Contractor, Service means any period of time the Independent Contractor performs services for the Employer on an independent contractor basis. **An** Employee or Independent Contractor terminates Service upon incurring a Severance from Employment.

**(A) Qualified Military Service.** Service includes any qualified military service the Plan must credit for contributions and benefits in order to satisfy the crediting of Service requirements of Code §414(u). A Participant whose employment is interrupted by qualified military service under Code §414(u) or who is on a leave of absence for qualified military service under Code §414(u) may elect to make additional Salary Reduction Contributions upon resumption of employment with the Employer equal to the maximum Deferral Contributions that the Participant could have elected during that period if the Participant’s employment with the Employer had continued (at the same level of Compensation) without the interruption of leave, reduced by the Deferral Contributions, if any, actually made for the Participant during the period of the interruption or leave. This right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave). The Employer shall make appropriate make-up Nonelective Contributions and Matching Contributions for such a Participant as required under Code §414(u). The Plan shall apply limitations of Article III to all Deferral Contributions under this paragraph with respect to the year to which the Deferral Contribution relates.

**(B) “Continuous Service”** means Service with the Employer during which the Employee does not incur a Severance from Employment.

**(C) “Severance from Employment.”**

(1) **Employee.** **An** Employee has a Severance from Employment when the Employee ceases to be an Employee of the Employer. A Participant does not incur a Severance from Employment if, in connection with a change in employment, the Participant’s new employer continues or assumes sponsorship of the Plan or accepts a Transfer of Plan assets as to the Participant.

(2) **Independent Contractor.** An Independent Contractor has a Severance from Employment when the contract(s) under which the Independent Contractor performs services for the Employer expires (or otherwise terminates), unless the Employer anticipates a renewal of the contractual relationship or the Independent Contractor becoming an Employee. The Employer anticipates renewal if it intends to contract for the services provided under the expired contract and neither the Employer nor the Independent Contractor has eliminated the Independent Contractor as a potential provider of such services under the new contract. Further, the Employer intends to contract for services conditioned only upon the Employer’s need for the services provided under the expired contract or the Employer’s availability of funds. Notwithstanding the preceding provisions of this Section 1.28, the Administrative Services Provider will consider an Independent Contractor to have incurred a Severance from Employment: (a) if the Administrative Services Provider or Trustee will not pay any Deferred Compensation to an Independent Contractor who is a Participant before a date which is at least twelve months after the expiration of the Independent Contractor’s contract (or the last to expire of such contracts) to render Services to the Employer; and (b) if before the applicable twelve-month payment date, the Independent Contractor performs Service as an Independent Contractor or as an Employee, the Administrative Services Provider or Trustee will not pay to the Independent Contractor his/her Deferred Compensation on the applicable date.

(3) **Uniformed Services.** for purposes of distributions to an individual in the uniformed services, such individual will be treated as incurring a Severance from Employment during any period the individual is performing service in the uniformed services described in Code § 3401(h)(2)(A). However, the plan will not distribute the benefit to such an individual without that individual’s consent, so long as the individual is receiving differential wage payments.

If an individual elects to receive a distribution under this provision, the individual may not make an elective deferral or employee contribution during the 6-month period beginning on the date of the distribution.

1.29 **“State”** means (a) one of the 50 states of the United States or the District of Columbia, or (b) a political subdivision of a State, or any agency or instrumentality of a State or its political subdivision. A State does not include the federal government or any agency or instrumentality thereof.

1.30 **“Taxable Year”** means the calendar year or other taxable year of a Participant.

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1.31 **“Transfer”** means a transfer of Eligible 457 Plan assets to another Eligible 457 Plan which is not a Rollover Contribution and which is made in accordance with Section 9.03.

1.32 **“Trust”** means the Trust created under the adopting Employer’s Plan. The Trust created and established under the adopting Employer’s Plan is a separate Trust, independent of the trust of any other Employer adopting this Eligible 457 Plan and is subject to Article VIII.

1.33 **“Trustee”** means the person or persons designated by the Employer to serve in the position of Trustee.

### ARTICLE II PARTICIPATION IN PLAN

2.01 **ELIGIBILITY.** Each Employee becomes a Participant in the Plan as soon as he/she completes and files a Participation Agreement. If this Plan is a restated Plan, each Employee who was a Participant in the Plan on the day before the Effective Date continues as a Participant in the Plan.

2.02 **PARTICIPATION UPON RE-EMPLOYMENT.** A Participant who incurs a Severance from Employment will re-enter the Plan as a Participant on the date of his/her re-employment.

2.03 **SPECIAL ELIGIBILITY PROVISIONS FOR PARTICIPANTS IN A PLAN USED AS A SOCIAL SECURITY REPLACEMENT PLAN.** Notwithstanding any provision to the contrary, the provisions of this Section 2.03 will apply if the Employer elects in a written agreement with the Administrative Services Provider to use the Plan as a Social Security replacement plan. If the Plan is used as a Social Security replacement plan, the provisions of Sections 4.05(a) and 5.03 will not apply.

**(A) Eligibility to participate for new Employees.** A new Employee shall, as a condition of employment participate in the Plan sign and file with the Administrative Services Provider an Acknowledgement Form/Card and thereby consenting to a reduction of salary by the amount of the Deferral Contribution specified in the Acknowledgement Form/Card. Contributions to the Participant’s Account must equal at least 7.5% of the Participant’s Compensation, or such other minimum amount as shall be required for the Plan to be considered a retirement system under Code §3121(b)(7)(F) and Treas. Reg. 31.3121(b)(7)-2, and the reduction in the Participant’s salary shall begin immediately thereafter.

**(B) Eligibility to participate for current Employees.** An Employee who is newly eligible to participate in the Plan shall, prior to becoming eligible to participate in the Plan, sign and file with

the Administrative Services Provider an Acknowledgement Form/Card and thereby consent to a reduction of salary by the amount of the Deferral Contribution specified in the Acknowledgement Form/Card. Allocations to the participant’s Account must equal at least 7.5% of the Participant’s Compensation or such other minimum amount as shall be required for the Plan to be considered a retirement system under Code §3121(b)(7)(F) and Treas. Reg. §31.3121(b)(7)-2, and the reduction in the Participant’s salary shall begin no earlier than the first pay period commencing during the first month after the date on which the Acknowledgement Form/Card is filed with the Administrative Services Provider.

**(C) Takeover Plans.** If the Plan is a restated Plan, an Employee who participated in the predecessor plan shall become a Participant in the Plan upon the Employer’s execution of the enabling documents for this Plan. Allocations to each such Participant’s Account must equal at least 7.5% of the Participant’s Compensation, or such other minimum amount as shall be required for the Plan to be considered a retirement system under Code §3121(b)(7)(F) and Treas. Reg. §31.3121(b)(7)-2, and the reduction in the Participant’s salary shall begin immediately thereafter.

### ARTICLE III DEFERRAL CONTRIBUTIONS/LIMITATIONS

#### 3.01 AMOUNT.

**(A) Contribution Formula.** For each Plan Year, the Employer will contribute to the Plan the amount of Deferral Contributions the Employee elects to defer under the Plan.

**(B) Return of Contributions.** The Employer contributes to this Plan on the condition its contribution is not due to a mistake of fact. If any Participant Salary Reduction Contribution is due to a mistake of fact, the Employer or the Trustee upon written request from the Employer will return the Participant’s contribution (adjusted for net income, gain or loss), within one year after payment of the contribution.

The Trustee may require the Employer to furnish it whatever evidence the Trustee deems necessary to enable the Trustee to confirm the amount the Employer has requested be returned is properly returnable.

**(C) Time of Payment of Contribution.** An Employer will deposit Salary Reduction Contributions to the Trust within a period that is not longer than is reasonable for the administration of Participant Accounts. Neither the Administrative Services Provider nor the Trustee is responsible for

the delay of deposits of Salary Reduction Contributions caused by the Employer.

**3.02 SALARY REDUCTION CONTRIBUTIONS.** The Plan does not apply any limitations on Salary Reduction Contributions other than the limitations applicable under the Code.

**(A) Deferral from Sick, Vacation and Back Pay.** Participants may make Salary Reduction Contributions from accumulated sick pay, from accumulated vacation pay or from back pay.

**(B) Application to Leave of Absence and Disability.** The Participation Agreement will continue to apply during the Participant's leave of absence or the Participant's disability (as the Employer shall establish), if the Participant has Compensation other than imputed compensation or disability benefits.

**(C) Post-severance deferrals limited to Post-Severance Compensation.** Deferral Contributions are permitted from an amount received following Severance from Employment only if the amount is Post-Severance Compensation.

**Post-Severance Compensation defined.** Post-Severance Compensation includes the amounts described in (1) and (2) below, paid after a Participant's Severance from Employment with the Employer, but only to the extent such amounts are paid by the later of 2% months after Severance from Employment or the end of the calendar year that includes the date of such Severance from Employment.

**(1) Regular pay.** Post-Severance Compensation *includes* regular pay after Severance of Employment if: (i) the payment is regular compensation for services during the Participant's regular working hours, or compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments; and (ii) the payment would have been paid to the Participant prior to a Severance from Employment if the Participant had continued in employment with the Employer.

**(2) Leave cashouts.** Post-Severance Compensation *includes* leave cashouts if those amounts would have been included in the definition of Compensation if they were paid prior to the Participant's Severance from Employment, and the amounts are payment for unused accrued bona fide sick, vacation, or other leave, but only if the Participant would have been able to use the leave if employment had continued.

**(3) Salary continuation payments for military service Participants.** Post-Severance Compensation

includes payments to an individual who does not currently perform services for the Employer by reason of Qualified Military Service (as described in Code §414(u)(1)) to the extent those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering Qualified Military Service.

**Limitation on Post-Severance Compensation.** Any payment of Compensation paid after Severance of Employment that is not described in Section 3.02(C)(1) or 3.02(C)(2) is not Post-Severance Compensation, even if payment is made by the later of 2% months after Severance from Employment or by the end of the calendar year that includes the date of such Severance of Employment.

**3.03 NORMAL LIMITATION.** Except as provided in Sections 3.04 and 3.05, a Participant's maximum Deferral Contributions (excluding Rollover Contributions and Transfers) under this Plan for a Taxable Year may not exceed the lesser of:

(a) The applicable dollar amount as specified under Code §457(e)(15) (or, beginning January 1, 2006) such larger amount as the Commissioner of the Internal Revenue may prescribe), or

(b) 100% of the Participant's Includible Compensation for the Taxable Year.

**3.04 NORMAL RETIREMENT AGE CATCH-UP CONTRIBUTION.** For one or more of the Participant's last three Taxable Years ending before the Taxable Year in which the Participant attains Normal Retirement Age, the Participant's maximum Deferral Contributions may not exceed the lesser of:

(a) Twice the dollar amount under Section 3.03 normal limitation, or (b) the underutilized limitation.

**(A) Underutilized Limitation.** A Participant's underutilized limitation is equal to the sum of: (i) the normal limitation for the Taxable Year, and (ii) the normal limitation for each of the prior Taxable Years of the Participant commencing after 1978 during which the Participant was eligible to participate in the Plan and the participant's Deferral Contributions were subject to the normal limitation or any other Code § 457(b) limit, *less* the amount of Deferral Contributions for each such prior Taxable Year, excluding age 50 catch-up contributions.

**(B) Multiple 457 Plans.** If the Employer maintains more than one Eligible 457 Plan, the Plans may not permit any Participant to have more than one Normal Retirement Age under the Plans.

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**(C) Pre-2002 Coordination.** In determining a Participant's underutilized limitation, the coordination rule in effect under now repealed Code §457(c)(2) applies. Additionally, the normal limitation for pre-2002 Taxable Years is applied in accordance with Code § 457(b)(2) as then in effect.

**3.05 AGE 50 CATCH-UP CONTRIBUTION.** All Employees who are eligible to make Salary Reduction Contributions under this Plan and who have attained age 50 before the close of the Taxable Year are eligible to make age 50 catch-up contributions for that Taxable Year in accordance with, and subject to the limitations of, Code § 414(v). Such catch-up contributions are not taken into account for purposes of the provisions of the plan implementing the required limitations of Code § 457. If, for a Taxable Year, an Employee makes a catch-up contribution under Section 3.04, the Employee is not eligible to make age 50 catch-up contributions under this Section 3.05. A catch-up eligible Participant in each Taxable Year is entitled to the greater of the amount determined under Section 3.04 or Section 3.05 catch-up amount plus the Section 3.03 normal limitation.

**3.06 CONTRIBUTION ALLOCATION.** The Administrative Services Provider will allocate to each Participant's Account his/her Deferral Contributions.

**3.07 ALLOCATION CONDITIONS.** The Plan does not impose any allocation conditions.

**3.08 ROLLOVER CONTRIBUTIONS.** The Plan permits Rollover Contributions.

**(A) Operational Administration.** The Employer, operationally and on a nondiscriminatory basis, may elect to permit or not to permit Rollover Contributions to this Plan or may elect to limit an eligible Employee's right or a Participant's right to make a Rollover Contribution. If the Employer permits Rollover Contributions, any participant (or as applicable, any eligible Employee), with the Employer's written consent and after filing with the Trustee the form prescribed by the Administrative Services Provider, may make a Rollover Contribution to the Trust. Before accepting a Rollover Contribution, the Trustee may require a Participant (or eligible Employee) to furnish satisfactory evidence the proposed transfer is in fact a "Rollover Contribution" which the Code permits an employee to make to an eligible retirement plan. The Trustee, in its sole discretion, may decline to accept a Rollover Contribution of property which could: (1) generate unrelated business taxable income; (2) create difficulty or undue expense in storage, safekeeping or valuation; or (3) create other practical problems for the Trust.

**(B) Pre-Participation Rollover.** If an eligible Employee makes a Rollover Contribution to the Trust prior to satisfying the Plan's eligibility conditions, the Administrative Services Provider and Trustee must treat the Employee as a limited Participant (as described in Rev. Rul. 96-48 or in any successor ruling). If a limited Participant has a Severance from Employment prior to becoming a Participant in the Plan, the Trustee will distribute his/her Rollover Contributions Account to the limited Participant in accordance with Article IV.

**(C) Separate Accounting.** If an Employer permits Rollover Contributions, the Administrative Services Provider must account separately for: (1) amounts rolled into this Plan from an eligible retirement plan (other than from another Eligible 457 plan); and (2) amounts rolled into this Plan from another Eligible 457 Plan. The Administrative Services Provider for purposes of ordering any subsequent distribution from this Plan may designate a distribution from a Participant's Rollover Contributions as coming first from either of (1) or (2) above if the Participant has both types of Rollover Contribution Accounts.

**3.09 DISTRIBUTION OF EXCESS DEFERRALS.** In the event that a Participant has Excess Deferrals, the Plan will distribute to the Participant the Excess Deferrals and allocable net income, gain or loss, in accordance with this Section 3.09.

The Administrative Services Provider will distribute Excess Deferrals from an Eligible 457 Plan as soon as is reasonably practicable following the Administrative Services Provider's or Employer's determination of the amount of the Excess Deferral.

**(A) Plan Aggregation.** If the Employer maintains more than one Eligible 457 Plan, the Employer must aggregate all such Plans in determining whether any Participant has Excess Deferrals.

**(B) Individual Limitation.** If a Participant participates in another Eligible 457 Plan maintained by a different employer, and the Participant has Excess Deferrals, the Administrative Services Provider may, but is not required, to correct the Excess Deferrals by making a corrective distribution from this Plan.

**3.10 DOLLAR LIMITS.** The table below shows the applicable dollar amounts described in paragraph 3.03(a) and limitations on age 50 catch-up contributions described in Section 3.05. These amounts are adjusted after 2006 for changes in the cost-of-living to the extent permitted in Code § 415(d).



Year	Applicable Dollar Amount	Age 50+ Catch-up Contribution Limitation
2002	\$11,000	\$1,000
2003	\$12,000	\$2,000
2004	\$13,000	\$3,000
2005	\$14,000	\$4,000
2006	\$15,000	\$5,000

#### ARTICLE IV TIME AND METHOD OF PAYMENT OF BENEFITS

##### 4.01 DISTRIBUTION

**RESTRICTIONS.** Except as the Plan provides otherwise, the Administrative Services Provider or Trustee may not distribute to a Participant his/her Account prior to the Participant's Severance from Employment, or such other event for which federal legislation is enacted or regulatory relief granted permitting the Plan to make distributions to qualifying Participants.

**(A) Distribution of Rollover Contributions.** To the extent the Employer permits Rollover Contributions (but not Transfers) to this Plan, a Participant may receive a distribution of such Rollover Contributions without regard to the restrictions found in this Section 4.01.

**4.02 TIME AND METHOD OF PAYMENT OF ACCOUNT.** The Administrative Services Provider, or Trustee at the direction of the Administrative Services Provider, will distribute to a Participant who has incurred a Severance from Employment the Participant's Account under one or any combination of payment methods elected by the Participant. The Participant may elect one of the following methods of payment: (1) lump sum payment, (2) partial lump sum payment, (3) installment, or (4) an annuity. In no event will the Administrative Services Provider direct (or direct the Trustee to commence) distribution, nor will the Participant elect to have distribution commence, later than the Participant's required beginning date, or under a method that does not satisfy Section 4.03.

Subject to any restrictions imposed by the Participant's investment providers and the Administrative Services Provider, the Participant: (1) may elect to commence distribution no earlier than is administratively practical following Severance from Employment; (2) may elect to postpone distribution of his/her Account to any fixed or determinable date including, but not beyond, the Participant's required beginning date; and (3) may elect the method of payment. A Participant may elect the timing and method of payment of his/her Account no later than 30 days before the date the Participant first would be

eligible to commence payment of the Participant's Account. The Administrative Services Provider must furnish to the Participant a form for the Participant to elect the time and a method of payment.

**4.03 REQUIRED MINIMUM DISTRIBUTIONS.** The Administrative Services Provider may not distribute nor direct the Trustee to distribute the Participant's Account, nor may the Participant elect any distribution his/her Account, under a method of payment which, as of the required beginning date, does not satisfy the minimum distribution requirements of Code § 401(a)(9) or which is not consistent with applicable Treasury regulations.

##### **(A) General Rules.**

(1) **Precedence.** The requirements of this Section 4.03 will take precedence over any inconsistent provisions of the Plan.

(2) **Requirements of Treasury Regulations Incorporated.** All distributions required under this Section 4.03 will be determined and made in accordance with the Treasury regulations under Code § 401(a)(9).

##### **(B) Time and Manner of Distribution**

(1) **Required Beginning Date.** The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date.

(2) **Death of Participant Before Distribution Begins.** If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(a) **Spouse Designated Beneficiary.** If the Participant's surviving spouse is the Participant's sole designated Beneficiary, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant dies, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.

(b) **Non-Spouse Designated Beneficiary.** If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, then, distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(c) **No Designated Beneficiary.** If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(d) Death of Spouse. If the Participant's surviving spouse is the Participant's sole designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 4.03(B)(2) other than Section 4.03(B)(2)(a), will apply as if the surviving spouse were the Participant.

For purposes of this Section 4.03(B) and Section 4.03(D), unless Section 4.03(B)(2)(d) applies, distributions are considered to begin on the Participant's required beginning date. If Section 4.03(B)(2)(d) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 4.03(B)(2)(a). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 4.03(B)(2)(a), the date distributions are considered to begin is the date distributions actually commence.

(3) **Forms of Distribution**. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with Sections 4.03(C) and 4.03(D). If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 4.01(a)(9) of the Code and the Treasury regulations.

### **(C) Required Minimum Distributions during Participant's Lifetime.**

(1) **Amount of Required Minimum Distribution for Each Distribution Calendar Year**. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

(a) ULT. The quotient obtained by dividing the Participant's account balance by the number in the Uniform Life Table set forth in Treas. Reg. §1.401(a)(9)-9, using the Participant's attained age as of the Participant's birthday in the distribution calendar year; or

(b) Younger Spouse. If the Participant's sole designated Beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor Table set forth in Treas. Reg. §1.401(a)(9)-9, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

(2) **Lifetime Required Minimum Distributions Continue Through Year of Participant's Death**. Required minimum distributions will be determined under this Section 4.03(C) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

### **(D) Required Minimum Distributions after Participant's Death.**

#### **(1) Death On or After Distributions Begin.**

(a) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for the distribution calendar year of the Participant's death is obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant. The Participant's remaining life expectancy is calculated using the attained age of the Participant as of the Participant's birthday in the calendar year of death. For each distribution calendar year after the year of the Participant's death, the minimum amount that will be distributed is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's designated Beneficiary.

(b) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30 of the calendar year after the calendar year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the calendar year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the participant's remaining life expectancy calculated using the attained age of the Participant as of the Participant's birthday in the calendar year of death, reduced by one for each subsequent calendar year.

#### **(2) Death before Date Distributions Begin.**

(a) Participant Survived by Designated Beneficiary. If the Participant dies before the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in Section 4.03(D)(1).

(b) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated Beneficiary as of September 30 of the year following the year of the

Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(c) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 4.03(B)(2)(a), this Section 4.03(D)(2) will apply as if the surviving spouse were the Participant.

#### (E) Definitions

(1) **Designated Beneficiary.** The individual who is designated as the Beneficiary under the Plan and is the designated beneficiary under Code §401(a)(9) and Treas. Reg. §1.401(a)(9)-1, Q&A-4.

(2) **Distribution calendar year.** A distribution calendar year means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which the distributions are required to begin under Section 4.03(B)(2). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

(3) **Life expectancy.** Life expectancy as computed by use of the Single Life Table in Treas. Reg. §1.401(a)(9)-9.

(4) **Participant's account balance.** The account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any Rollover Contributions or Transfers to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

(5) **Required beginning date.** A Participant's required beginning date is the April 1 of the calendar year following the later of: (1) the calendar year in which the Participant attains age 70½, or (2) the calendar year in which the Participant retires or such other date under Code § 401(a)(9) by which required minimum distributions must commence.

(F) **General 2009 waiver.** The requirements of Code § 401(a)(9) and the provisions of the Plan relating thereto, will not apply for the distribution calendar year 2009.

(1) **Special rule regarding waiver period.** For purposes of Code § 401(a)(9) and the provisions of the Plan relating thereto: (a) the required beginning date with respect to any individual will be determined without regard to this Article IV for purposes of applying Code § 401(a)(9) for distribution calendar years other than 2009; and (b) if the 5-year rule of Code § 401(a)(9)(B)(ii) applies, the 5-year period described therein shall be determined without regard to calendar year 2009.

(2) **Eligible rollover distributions.** If all or any portion of a distribution during 2009 is treated as an eligible rollover distribution but would not be so treated if the minimum distribution requirements under Code § 401(a)(9) had applied during 2009, then the Plan will not treat such distribution as an eligible rollover distribution for purposes of the direct rollover rules of Code § 401(a)(31), the notice requirements of Code §402(f), or the 20% withholding requirement of Code §3405(c).

(3) **Participant may elect.** The Plan will permit an affected Participant to elect whether to receive his/her RMD distribution for 2009. If the Participant fails to notify the Administrative Services Provider of his/her waiver, the Plan will distribute the 2009 RMD to the Participant.

4.04 **DEATH BENEFITS.** Upon the death of the Participant, the Administrative Services Provider must pay or direct the Trustee to pay the Participant's Account in accordance with Section 4.03. Subject to Section 4.03, a Beneficiary may elect the timing and method of payment in the same manner as a Participant may elect under Section 4.02, if such elections apply.

In the case of a death occurring on or after January 1, 2007, if a participant dies while performing qualified military service (as defined in Code § 414(u)), the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan as if the participant had resumed and then terminated employment on account of death.

**4.05 DISTRIBUTIONS PRIOR TO SEVERANCE FROM EMPLOYMENT.** Notwithstanding the Section 4.01 distribution restrictions, the Plan permits the following in-service distributions in accordance with this Section.

**(A) Unforeseeable Emergency.** In the event of a Participant's unforeseeable emergency, the Administrative Services Provider may make a distribution to a Participant who has not incurred a Severance from Employment.

An unforeseeable emergency is a severe financial hardship of a Participant or Beneficiary resulting from: (1) illness or accident of the Participant, the Participant's Beneficiary, or the Participant's spouse or dependent (as defined in Code § 152, and, for taxable years beginning on or after January 1, 2005, without regard to Code § 152(b)(1), (b)(2), and (d)(1)(B)); (2) loss of the Participant's or Beneficiary's property due to casualty; (3) the need to pay for the funeral expenses of the Participant's spouse or dependent (as defined in Code § 152, and, for taxable years beginning on or after January 1, 2005, without regard to Code § 152(b)(1), (b)(2), and (d)(1)(B)); or (4) other similar extraordinary and unforeseeable circumstances arising from events beyond the Participant's or Beneficiary's control. The Administrative Services Provider will not pay the Participant or the Beneficiary more than the amount reasonably necessary to satisfy the emergency need, which may include amounts necessary to pay taxes or penalties on the distribution. The Administrative Services Provider will not make payment to the extent the Participant or Beneficiary may relieve the financial hardship by cessation of deferrals under the Plan, through insurance or other reimbursement, or by liquidation of the individual's assets to the extent such liquidation would not cause severe financial hardship.

The Participant's Beneficiary is a person who a Participant designates as a "primary beneficiary" and who is or may become entitled to a Participant's Plan account upon the Participant's death.

A Participant's unforeseeable emergency event includes a severe financial hardship of the participant's primary Beneficiary under the Plan, that would constitute an emergency event if it occurred with respect to the participant's spouse or dependent as defined under Code § 152.

**(B) De minimis distribution.** A Participant may elect to receive a distribution of his/her Account where: (1) the Participant's Account (disregarding Rollover Contributions) does not exceed \$5,000 (or such other amount as does not exceed the Code § 411(a)(11)(A) dollar amount); (2) the Participant has not made or received an allocation of any Deferral Contributions under the Plan during the two-year period ending on the date of distribution; and (3) the

Participant has not received a prior distribution under this Section 4.05(B).

**(C) Distribution of Rollover Contributions.** A Participant may request and receive distribution of his/her Account attributable to Rollover Contributions (but not to Transfers) before the Participant has a distributable event under Section 4.01.

**4.06 DISTRIBUTIONS UNDER QUALIFIED DOMESTIC RELATIONS ORDERS (QDROs).** Notwithstanding any other provision of this Plan, the QDRO provisions will apply. The Administrative Services Provider (and any Trustee) must comply with the terms of a QDRO, as defined in Code § 414(p), which is issued with respect to the Plan.

**(A) Time and Method of Payment.** This Plan specifically permits distribution to an alternate payee under a QDRO at any time, notwithstanding any contrary Plan provision and irrespective of whether the Participant has attained his/her earliest retirement age (as defined under Code § 414(p)) under the Plan. Nothing in this Section 4.06 gives a Participant a right to receive distribution at a time the Plan otherwise does not permit nor authorizes the alternate payee to receive a form of payment the Plan does not permit.

**(B) QDRO Procedures.** Upon receiving a domestic relations order, the Administrative Services Provider promptly will notify the Participant and any alternate payee named in the order, in writing, of the receipt of the order and the Plan's procedures for determining the qualified status of the order. Within a reasonable period of time after receiving the domestic relations order, the Administrative Services Provider must determine the qualified status of the order and must notify the Participant and each alternate payee, in writing, of the Administrative Services Provider's determination. The Administrative Services Provider must provide notice under this paragraph by mailing to the individual's address specified in the domestic relations order.

**(C) Accounting.** If any portion of the Participant's Account Balance is payable under the domestic relations order during the period the Administrative Services Provider is making its determination of the qualified status of the domestic relations order, the Administrative Services Provider may maintain a separate accounting of the amounts payable. If the Administrative Services Provider determines the order is a QDRO within 18 months of the date amounts first are payable following receipt of the domestic relations order, the Administrative Services Provider will distribute or will direct the Trustee to distribute the payable amounts in accordance with the QDRO. If the Administrative Services Provider does not make its determination of the qualified status of the order within the 18-month determination period,

the Administrative Services Provider will distribute or will direct the Trustee to distribute the payable amounts in the manner the Plan would distribute if the order did not exist and will apply the order prospectively if the Administrative Services Provider later determines the order is a QDRO.

To the extent it is not inconsistent with the provisions of the QDRO, the Administrative Services Provider may segregate or may direct the Trustee to segregate the QDRO amount in a segregated investment account. The Administrative Services Provider or Trustee will make any payments or distributions required under this Section 4.06 by separate benefit checks or other separate distribution to the alternate payee(s).

**(D) Permissible QDROs.** A domestic relations order that otherwise satisfies the requirements for a qualified domestic relations order ("QDRO") will not fail to be a QDRO: (i) solely because the order is issued after, or revises, another domestic relations order or QDRO; or (ii) solely because of the time at which the order is issued, including issuance after the annuity starting date or after the participant's death.

#### 4.07 DIRECT ROLLOVER OF ELIGIBLE ROLLOVER DISTRIBUTIONS – GOVERNMENTAL PLAN.

**(A) Participant Election.** A Participant (including for this purpose, a former Employee) may elect, at the time and in the manner the Administrative Services Provider prescribes, to have any portion of his/her eligible rollover distribution from the Plan paid directly to an eligible retirement plan specified by the Participant in a direct rollover election. For purposes of this election, a "Participant" includes as to their respective interests, a Participant's surviving spouse and the Participant's spouse or former spouse who is an alternate payee under a QDRO.

**(B) Rollover and Withholding Notice.** At least 30 days and not more than 180 days prior to the Trustee's distribution of an eligible rollover distribution, the Administrative Services Provider must provide a written notice (including a summary notice as permitted under applicable Treasury regulations) explaining to the distributee the rollover option, the applicability of mandatory 20% federal withholding to any amount not directly rolled over, and the recipient's right to roll over within 60 days after the date of receipt of the distribution ("rollover notice").

**(C) Non-spouse Beneficiary rollover right.** A non-spouse Beneficiary who is a "designated beneficiary" under Code § 401(a)(9)(E) and the regulations thereunder, by a direct trustee-to-trustee transfer ("direct rollover"), may roll over all or any portion of his/her distribution to an individual retirement account the Beneficiary establishes for purposes of

receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an eligible rollover distribution.

#### **(1) Certain requirements not applicable.**

Although a non-spouse Beneficiary may roll over directly a distribution, commencing with distributions after December 31, 2009, the distribution will be subject to the direct rollover requirements of Code § 401(a)(31) (including the automatic rollover provisions of Code § 401(a)(31)(B)), the notice requirements of Code § 402(f) and the mandatory withholding requirements of Code § 3405(c). If a non-spouse Beneficiary receives a distribution from the Plan, the distribution is not eligible for a "60-day" rollover.

**(2) Trust Beneficiary.** If the participant's named Beneficiary is a trust, the Plan may make a direct rollover to an individual retirement account on behalf of the trust, provided the trust satisfies the requirements to be a designated beneficiary within the meaning of Code § 401(a)(9)(E).

#### **(3) Required minimum distributions not eligible for rollover.**

A non-spouse Beneficiary may not roll over an amount which is a required minimum distribution, as determined under applicable Treasury regulations and other Revenue Service guidance. If the participant dies before his/her required beginning date and the non-spouse Beneficiary rolls over to an IRA the maximum amount eligible for rollover, the Beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treas. Reg. § 1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse Beneficiary's distribution.

**(D) Definitions.** The following definitions apply to this Section:

**(1) Eligible rollover distribution.** An eligible rollover distribution is any distribution of all or any portion of a Participant's Account, except an eligible rollover distribution does not include: (a) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Participant or the joint lives (or joint life expectancies) of the Participant and the Participant's designated Beneficiary, or for a specified period of ten years or more; (b) any Code § 401(a)(9) required minimum distribution; (c) any unforeseeable emergency distribution; and (d) any distribution which otherwise would be an eligible rollover distribution, but where the total distributions to the Participant during that calendar year are reasonably expected to be less than \$200.

**(2) Eligible retirement plan.** An eligible retirement plan is an individual retirement account

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described in Code § 408(a), an individual retirement annuity described in Code § 408(b), an annuity plan described in Code § 403(a), a qualified plan described in Code § 401(a), an annuity contract (or custodial agreement) described in Code § 403(b), or an eligible deferred compensation plan described in Code § 457(b) and maintained by an Employer described in Code § 457(e)(1)(A), which accepts the Participant's, the Participant's spouse or alternate payee's eligible rollover distribution. For distributions made after December 31, 2007, a Participant or Beneficiary may elect to roll over directly an eligible rollover distribution to a Roth IRA described in Code § 408A(b).

(3) **Direct rollover.** A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

(4) **Mandatory distribution.** The Administrative Services Provider is directed to make a mandatory distribution, which is an eligible rollover distribution, without the Participant's consent provided that the Participant's Account is less than \$1,000. A distribution to a Beneficiary is not a mandatory distribution.

(5) **401(a)(31)(B) Effective Date.** The § 401(a)(31)(B) Effective Date is the date of the close of the first regular legislative session of the legislative body with the authority to amend the Plan that begins on or after January 1, 2006.

**4.08 ELECTION TO DEDUCT FROM DISTRIBUTION.** For distributions in taxable years beginning after December 31, 2006, an Eligible Retired Public Safety Officer may elect annually for that taxable year to have the Plan deduct an amount from a distribution which the Eligible Retired Public Safety Officer otherwise would receive and include in income. The plan will pay such deducted amounts directly to the provider as described in Section 4.08(A).

(A) **Direct payment.** The Plan will pay directly to the provider of the accident or health insurance plan or qualified long-term care insurance contract the amounts the Eligible Retired Public Safety Officer has elected to have deducted from the distribution. Such amounts may not exceed the lesser of \$3,000 or the amount the Participant paid for such taxable year for qualified healthcare premiums, and which otherwise complies with Code § 402(l).

### (B) Definitions.

(1) **Eligible retired public safety officer.** An "Eligible Retired Public Safety Officer" is an individual who, by reason of disability or attainment of normal retirement age, has experienced a Severance from Employment as a Public Safety Officer with the Employer.

(2) **Public safety officer.** A "Public Safety Officer" has the same meaning as in § 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3796b(9)(A)).

(3) **Qualified health insurance premiums.** The term "qualified health insurance premiums" means premiums for coverage for the Eligible Retired Public Safety Officer, his/her spouse, and dependents, by an accident or health plan or qualified long-term care insurance contract (as defined in Code § 7702B(b)).

## ARTICLE V ADMINISTRATIVE SERVICES PROVIDER - DUTIES

5.01 **TERM / VACANCY.** The Administrative Services Provider will serve until his/her successor is appointed. In case the Employer has not appointed a successor Administrative Services Provider, the Employer will exercise any and all duties of the Administrative Services Provider pending the filling of the vacancy.

5.02 **DUTIES.** The Administrative Services Provider will have the following duties:

(a) To create administrative forms necessary for the proper and efficient administration of the Plan provided the forms are not inconsistent with the terms of the Plan;

(b) To enforce the terms of the Plan and its procedures, including this document and such other documents related to the Plan's operation;

(c) To make, at the direction of the Participant or Beneficiary or pursuant to Section 4.07(D)(4), distributions of an Account;

(d) To review in accordance with the Plan's procedures respecting a claim for (or denial of a claim for) a benefit under the Plan;

(e) To furnish the Employer with information which the Employer may require for tax or other purposes;

(f) To make distributions on account of unforeseeable emergency in accordance with the Plan's procedures;

(g) To accept Deferral Contributions, Employer Contributions, and Rollover Contributions;

(h) To accept Transfers;

(i) To accept Participant or, in the case of a deceased Participant, Beneficiary direction of investment;

(j) To comply with any reporting and disclosure rules applicable to the Plan;

(k) To make loans to Participants if elected by the Employer;

(l) To appoint agents to act for and in performing its third party administrative services to the Plan; and

(m) To undertake any other action the Administrative Services Provider deems reasonable or necessary to provide third party administrative services to the Plan.

**5.03 LOANS TO PARTICIPANTS.** The Employer may elect to permit the Administrative Services Provider and/or Trustee to make Plan loans to Participants by executing a participant loan program document with the Administrative Services Provider. Any loan by the Plan to a Participant shall be made in compliance with Code § 72(p). If Plan loans are permitted, the Administrative Services Provider, with the approval and direction of the Employer, may establish, amend or terminate from time to time, nondiscriminatory administrative procedures for administering loans. Such loan procedures must be a written document and must include: (1) the procedure for applying for a loan; (2) the criteria for approving or denying a loan; (3) the limitations, if any, on the types and amounts of loans available; and (4) the events constituting default and the steps the Plan will take to preserve Plan assets in the event of default. Any administrative procedures adopted under this Section 5.03 shall be construed as part of the Plan.

**5.04 INDIVIDUAL ACCOUNTS / RECORDS.** The Administrative Services Provider will maintain a separate Account in the name of each Participant to reflect the value of the Participant's Deferred Compensation under the Plan.

**5.05 VALUE OF PARTICIPANT'S ACCOUNT.** The value of each Participant's Account consists of his/her accumulated Deferred Compensation, as of the most recent Accounting Date or any later date as the Administrative Services Provider may determine.

**5.06 ALLOCATION OF NET INCOME, GAIN OR LOSS.** As of each Accounting Date (and each other valuation date determined under Section 5.04), the Administrative Services Provider will adjust Accounts to reflect net income, gain or loss, if any, since the last Accounting Date or Account valuation. The Administrative Services Provider will continue to allocate net income, gain and loss to a Participant's

Account subject to an installment distribution, until the Account is fully distributed.

**5.07 ACCOUNT CHARGED** The Administrative Services Provider will charge all distributions made to a Participant or to his/her Beneficiary, or transferred under Section 9.03 from his/her Account, against the Account of the Participant when made.

**5.08 PARTICIPANT DIRECTION OF INVESTMENT.** Subject to the terms and conditions required by the Administrative Services Provider and the Trustee, if any, a Participant will have the right to direct the investment or re-investment of the assets comprising the Participant's Account. The Administrative Services Provider will account separately for the Participant-directed Accounts. The Participant's right to direct investment does not give the Participant any vested interest or secured or preferred position with respect to assets over which he/she has investment responsibility.

**5.09 VESTING / SUBSTANTIAL RISK OF FORFEITURE.** Each Participant's Account will be immediately 100% vested.

**5.10 PRESERVATION OF ELIGIBLE PLAN STATUS.** The Employer may take any such necessary and appropriate action to preserve the status of the Plan as an Eligible 457 Plan.

**5.11 LIMITED LIABILITY.** The Employer will not be liable to pay plan benefits to a Participant in excess of the value of the Participant's Account as the Administrative Services Provider determines in accordance with the Plan terms. The Employer, the Administrative Services Provider, or the Trustee will not be liable for losses arising from depreciation or shrinkage in the value of any investments acquired under this Plan.

**5.12 LOST PARTICIPANTS.** If the Administrative Services Provider is unable to locate any Participant or Beneficiary whose Account becomes distributable (a "lost Participant"), the Administrative Services Provider will apply the provisions of this Section 5.12.

**(A) Attempt to Locate.** The Administrative Services Provider will attempt to locate a lost Participant and may use one or more of the following methods: (1) provide a distribution notice to the lost Participant at his/her last known address by certified or registered mail; (2) use the IRS letter forwarding program under Rev. Proc. 94-22; (3) use a commercial locator service, the internet or other general search method; (4) use the Social Security Administration or PBGC search program; or (5) use such other methods as the Administrative Services Provider believes prudent.

**(B) Failure to Locate.** If a lost Participant is not located after 6 months following the date the Administrative Services Provider first attempts to locate the lost Participant using one or more of the methods described in Section 5.12(A), the Administrative Services Provider may employ the unclaimed property processes of the state of the lost Participant's last known address. Neither the Administrative Services Provider nor the Trustee shall be responsible for restoring the Account (including potential gains) if a lost Participant whose Account was deposited with a state later makes a claim for his/her Account.

**(C) Nonexclusivity and Uniformity.** The provisions of this Section 5.12 are intended to provide permissible but not exclusive means for the Administrative Services Provider to administer the Accounts of lost Participants. The Administrative Services Provider may utilize any other reasonable method to locate lost Participants and to administer the Accounts of lost Participants, including such methods as the Revenue Service or other regulatory agency may in the future specify. The Administrative Services Provider will apply Section 5.12 in a reasonable manner, but may in determining a specific course of action as to a particular Account, reasonably take into account differing circumstances such as the amount of a lost Participant's Account, the expense in attempting to locate a lost participant, the Administrative Services Provider's ability to establish and the expense of establishing a rollover IRA, and other factors. The Administrative Services Provider may charge to the Account of a lost Participant the reasonable expenses incurred under this Section 5.12 and which are associated with the lost Participant's Account.

**5.13 PLAN CORRECTION.** The Administrative Services Provider, as directed by the Employer, may undertake such correction of Plan errors as the Employer deems necessary, including but not limited to correction to maintain the Plan's status as an "eligible deferred compensation plan" under the Code.

## ARTICLE VI PARTICIPANT ADMINISTRATIVE PROVISIONS

**6.01 BENEFICIARY DESIGNATION.** A Participant from time to time may designate, in writing, any person(s) (including a trust or other entity), contingently or successively, to whom the Administrative Services Provider or Trustee will pay the Participant's Account (including any life insurance proceeds payable to the Participant's Account) in the event of death. A Participant also may designate the method of payment of his/her Account. The Administrative Services Provider will prescribe the form for the Participant's written designation of Beneficiary and, upon the Participant's

filing the form with the Administrative Services Provider, the form revokes all designations filed prior to that date by the same Participant. Provided the Administrative Services Provider has been provided reasonable notice thereof, a divorce decree, or a decree of legal separation, revokes the Participant's designation, if any, of his/her spouse as his/her Beneficiary under the Plan unless: (a) the decree or a QDRO provides otherwise; or (b) the Participant has re-designated his/her former spouse as Beneficiary following the date of the divorce decree, or other decree of legal separation. The foregoing revocation provision (if applicable) applies only with respect to a Participant whose divorce or legal separation becomes effective on or following the date the Employer executes the Plan.

### 6.02 NO BENEFICIARY DESIGNATION.

If a Participant fails to name a Beneficiary in accordance with Section 6.01, or if the Beneficiary named by a Participant predeceases the Participant, then the Administrative Services Provider will pay the Participant's remaining Account to the Participant's estate.

If the Beneficiary survives the Participant, but dies prior to distribution of the Participant's entire Account, the Trustee will pay the remaining Account to the Beneficiary's estate unless: (1) the Participant's Beneficiary designation provides otherwise; or (2) the Beneficiary has properly designated a Beneficiary. A Beneficiary only may designate a Beneficiary for the Participant's Account Balance remaining at the Beneficiary's death, and the Beneficiary's designation otherwise complies with the Plan terms. The Administrative Services Provider will direct a Trustee if applicable as to the method and to whom the Trustee will make payment under this Section 6.02.

### 6.03 PARTICIPATION AGREEMENT.

**(A) General.** A Participant must elect to make Salary Reduction Contributions on a Participation Agreement form the Administrative Services Provider provides for this purpose. The Participation Agreement must be consistent with the procedures of the Administrative Services Provider. The Participation Agreement may impose such other terms and limitations as the Employer or Administrative Services Provider may determine.

**(B) Election Timing.** A Participation Agreement may not take effect earlier than the first day of the calendar month following the date the Participant executes the Participation Agreement and as to Compensation paid or made available in such calendar month. However, if an Employee is eligible to become a Participant during the Employee's calendar month of hire, the Employee may execute a Participation Agreement on or before the date he/she



becomes an Employee, effective for the month in which he/she becomes an Employee.

**(C) Sick, Vacation and Back Pay.** If the Employer adopts a policy that permits Participants to make Salary Reduction Contributions from accumulated sick pay, from accumulated vacation pay or from back pay, a Participant who will incur a Severance from Employment may execute a Participation Agreement before such amounts are paid or made available provided (i) such amounts are paid or made available before the Participant incurs the Severance; and (ii) the Participant is an Employee in that month.

**(D) Modification of Participation Agreement.** A Participation Agreement remains in effect until a Participant modifies it or ceases to be eligible to participate in the Plan. A Participant may modify his/her Participation Agreement by executing a new Participation Agreement. Any modification will become effective no earlier than the beginning of the calendar month commencing after the date the Participant executes the new Participation Agreement. Filing a new Participation Agreement will revoke all Participation Agreements filed prior to that date. The Employer or Administrative Services Provider may restrict the Participant's right to modify his/her Participation Agreement in any Taxable Year.

**6.04 PERSONAL DATA TO ADMINISTRATIVE SERVICES PROVIDER.** Each Participant and each Beneficiary of a deceased Participant must furnish to the Administrative Services Provider such evidence, data or information as the Administrative Services Provider considers necessary or desirable for the purpose of administering the Plan. The provisions of this Plan are effective for the benefit of each Participant upon the condition precedent that each Participant will furnish promptly full, true and complete evidence, data and information when requested by the Administrative Services Provider, provided the Administrative Services Provider advises each Participant of the effect of his failure to comply with its request.

**6.05 ADDRESS FOR NOTIFICATION.** Each Participant and each Beneficiary of a deceased Participant must file with the Administrative Services Provider from time to time, in writing, his/her address and any change of address. Any communication, statement or notice addressed to a Participant, or Beneficiary, at his/her last address filed with the Administrative Services Provider, or as shown on the records of the Employer, binds the Participant, or Beneficiary, for all purposes of this Plan.

**6.06 PARTICIPANT OR BENEFICIARY INCAPACITATED.** If evidence is submitted to the Administrative Services Provider which supports an opinion that a Participant or Beneficiary entitled to a

Plan distribution is not able to care for his/her affairs because of a mental condition, a physical condition, or by reason of age, the Administrative Services Provider or the Trustee may make the distribution to the Participant's or Beneficiary's guardian, conservator, trustee, custodian (including under a Uniform Transfers or Gifts to Minors Act) or to his/her attorney-in-fact or to other legal representative upon furnishing evidence of such status satisfactory to the Administrative Services Provider and to the Trustee. The Administrative Services Provider and the Trustee do not have any liability with respect to payments so made and neither the Administrative Services Provider nor the Trustee has any duty to make inquiry as to the competence of any person entitled to receive payments under the Plan.

## ARTICLE VII MISCELLANEOUS

**7.01 NO ASSIGNMENT OR ALIENATION.** A Participant or Beneficiary does not have the right to commute, sell, assign, pledge, transfer or otherwise convey or encumber the right to receive any payments under the Plan or Trust and the Administrative Services Provider and the Trustee will not recognize any such anticipation, assignment, or alienation. The payments and the rights under this Plan are non-assignable and nontransferable. Subject to Section 8.15, a Participant's or Beneficiary's interest in the Trust is not subject to attachment, garnishment, levy, execution or other legal or equitable process.

**7.02 EFFECT ON OTHER PLANS.** This Plan does not affect benefits under any other retirement, pension, or benefit plan or system established for the benefit of the Employer's Employees, and participation under this Plan does not affect benefits receivable under any such plan or system, except to the extent provided in such plan or system.

**7.03 WORD USAGE.** Words used in the masculine will apply to the feminine where applicable, and wherever the context of the Plan dictates, the plural will be read as the singular and the singular as the plural.

**7.04 STATE LAW.** The laws of the state of the Employer's principal place of business will determine all questions arising with respect to the provisions of this Prototype Plan, except to the extent Federal law supersedes State law.

**7.05 EMPLOYMENT NOT GUARANTEED.** Nothing contained in this Plan, or any modification or amendment to the Plan, or in the creation of any Account, or the payment of any benefit, gives any Employee, Participant or Beneficiary any right to continue employment, any legal or equitable right against the Employer, the

## 457 Governmental Plan and Trust

Administrative Services Provider, the Trustee, any other Employee of the Employer, or any agents thereof except as expressly provided by the Plan.

**7.06 NOTICE, DESIGNATION, ELECTION, CONSENT AND WAIVER.** All notices under the Plan and all Participant or Beneficiary designations, elections, consents or waivers must be in writing and made in a form acceptable to the Administrative Services Provider. To the extent permitted by Treasury regulations or other applicable guidance, any Plan notice, election, consent or waiver may be transmitted electronically. Any person entitled to notice under the Plan may waive the notice or shorten the notice period except as otherwise required by the Code.

**7.07 LIMITATIONS ON TRANSFERS AND EXCHANGES.** The Employer and the Administrative Services Provider may adopt procedures to govern Participant elections and directions concerning a Participant's, Beneficiary's, or Alternate Payee's investment specifications and may impose limitations on transfers and exchanges from one investment option with the Plan to another. These procedures shall be in addition to any established by investment providers to the Plan. The Employer and the Administrative Services Provider may decline to implement any investment instructions for a Participant, Beneficiary, or Alternate Payee where either deems appropriate.

**7.08 EMPLOYER RESPONSIBILITY FOR DISTRIBUTION OF PLAN RELATED INFORMATION.** The Employer will distribute all Plan related amendments, restated plan documents, and deferred compensation plan tax related documentation to the Administrative Service Providers when there are multiple Administrative Service Providers of the Plan.

**7.09 USE OF PLAN ASSETS THAT ARE NOT ATTRIBUTABLE TO AN ACCOUNT.** If the Plan receives money that is not attributable to an Account, then the Employer will direct the Administrative Services Provider as to the use of these amounts. Examples include, but are not limited to, money received by the Plan as part of a settlement, litigation award or fee reimbursement. The Employer may use these amounts to offset Plan expenses or may allocate these amounts to Participants or as it deems appropriate

## ARTICLE VIII TRUST PROVISIONS

**8.01 APPLICATION.** The provisions of this Article VIII apply only if the Employer has not elected to substitute another trust, custodial accounts or annuity contracts in lieu of the Trust established under this Article VIII.

**8.02 ACCEPTANCE / HOLDING.** The Trustee accepts the Trust created under the Plan and agrees to perform the duties and obligations imposed. The Trustee must hold in trust under this Article VIII, all Deferred Compensation until paid in accordance with the Plan terms.

**8.03 RECEIPT OF CONTRIBUTIONS.** The Trustee is accountable to the Employer for the funds contributed to it by the Employer or the Administrative Services Provider, but the Trustee does not have any duty to see that the contributions received comply with the provisions of the Plan.

**8.04 FULL INVESTMENT POWERS.** The Trustee is authorized and empowered, but not by way of limitation, to exercise and perform the following duties:

(a) To invest any part or all of the Trust in any common or preferred stocks, open-end or closed-end mutual funds, put and call options traded on a national exchange, United States retirement plan bonds, corporate bonds, debentures, convertible debentures, commercial paper, U. S. Treasury bills, U. S. Treasury notes and other direct or indirect obligations of the United States Government or its agencies, improved or unimproved real estate situated in the United States, limited partnerships, insurance contracts of any type, mortgages, notes or other property of any kind, real or personal, and to buy or sell options on common stock on a nationally recognized options exchange with or without holding the underlying common stock, as a prudent person would do under like circumstances. Any investment made or retained by the Trustee in good faith will be proper but must be of a kind constituting a diversification considered by law suitable for trust investments;

(b) To retain in cash so much of the Trust as it may deem advisable to satisfy liquidity needs of the Plan and to deposit any cash held in the Trust in a bank account at reasonable interest;

(c) To invest, if the Trustee is a bank or similar financial institution supervised by the United States or by a State, in any type of deposit of the Trustee (or a bank related to the Trustee within the meaning of Code §414(b)) at a reasonable rate of interest or in a common trust fund as described in Code §584, or in a collective investment fund, the provisions of which the Trust incorporates by this reference, which the Trustee (or its affiliate, as defined in Code §1504) maintains exclusively for the collective investment of money contributed by the bank (or its affiliate) in its capacity as Trustee and which conforms to the rules of the Comptroller of the Currency;

(d) To manage, sell, contract to sell, grant options to purchase, convey, exchange, transfer, abandon, improve, repair, insure, lease for any term even though commencing in the future or extending beyond the term of the Trust, and otherwise deal with all property, real or personal, in such manner, for such considerations and on such terms and conditions as the Trustee decides;

(e) To credit and distribute the Trust as directed by the Administrative Services Provider of the Plan. The Trustee will not be obliged to inquire as to whether any payee or distributee is entitled to any payment or whether the distribution is proper or within the terms of the Plan, or as to the manner of making any payment or distribution. The Trustee will be accountable only to the Administrative Services Provider for any payment or distribution made by it in good faith on the order or direction of the Administrative Services Provider;

(f) To borrow money, to assume indebtedness, extend mortgages and encumber by mortgage or pledge;

(g) To compromise, contest, arbitrate or abandon claims and demands;

(h) To have with respect to the Trust all of the rights of an individual owner, including the power to exercise any and all voting rights associated with Trust assets, to give proxies, to participate in any voting trusts, mergers, consolidations or liquidations, to tender shares and to exercise or sell stock subscriptions or conversion rights;

(i) To lease for oil, gas and other mineral purposes and to create mineral severances by grant or reservation; to pool or unitize interest in oil, gas and other minerals; and to enter into operating agreements and to execute division and transfer orders;

(j) To hold any securities or other property in the name of the Trustee or its nominee, with depositories or agent depositories or in another form as it may deem best, with or without disclosing the trust relationship;

(k) To perform any and all other acts in its judgment necessary or appropriate for the proper and advantageous management, investment and distribution of the Trust;

(l) To retain any funds or property subject to any dispute without liability for the payment of interest, and to decline to make payment or delivery of the funds or property until a court of competent jurisdiction makes a final adjudication;

(m) To file all tax returns required of the Trustee;

(n) To furnish to the Employer and the Administrative Services Provider an annual statement of account showing the condition of the Trust and all investments, receipts, disbursements and other transactions effected by the Trustee during the Plan Year covered by the statement and also stating the assets of the Trust held at the end of the Plan Year, which accounts will be conclusive on all persons, including the Employer and the Administrative Services Provider, except as to any act or transaction concerning which the Employer or the Administrative Services Provider files with the Trustee written exceptions or objections within 90 days after the receipt of the accounts; and

(o) To begin, maintain or defend any litigation necessary in connection with the administration of the Trust, except that the Trustee will not be obliged or required to do so unless

**8.05 RECORDS AND STATEMENTS.** The records of the Trustee pertaining to the Trust will be open to the inspection of the Employer at all reasonable times and may be audited from time to time by any person or persons as the Employer may specify in writing. The Trustee will furnish the Administrative Services Provider whatever information relating to the Trust the Administrative Services Provider considers necessary.

**8.06 FEES AND EXPENSES FROM FUND.** The Trustee will receive reasonable annual compensation in accordance with its fee schedule as published from time to time. The Trustee will pay from the Trust all fees and expenses the Trustee reasonably incurs in its administration of the Trust, unless the Employer pays the fees and expenses.

**8.07 PROFESSIONAL AGENTS.** The Trustee may employ and pay from the Trust reasonable compensation to agents, attorneys, accountants and other persons to advise the Trustee as in its opinion may be necessary. The Trustee may delegate to any agent, attorney, accountant or other person selected by it any non-Trustee power or duty vested in it by the Trust, and the Trustee may act or refrain from acting on the advice or opinion of any agent, attorney, accountant or other person so selected.

**8.08 DISTRIBUTION OF CASH OR PROPERTY.** The Trustee may make distribution under the Plan in cash or property, or partly in each, at its fair market value as determined by the Trustee.

**8.09 RESIGNATION AND REMOVAL.** The Trustee or the Custodian may resign its position by giving written notice to the Employer and to the Administrative Services Provider. The Trustee's notice must specify the effective date of the Trustee's resignation, which date must be at least **30** days

#### 457 Governmental Plan and Trust

following the date of the Trustee's notice, unless the Employer consents in writing to shorter notice.

The Employer may remove a Trustee or a Custodian by giving written notice to the affected party. The Employer's notice must specify the effective date of removal which date must be at least **30** days following the date of the Employer's notice, except where the Employer reasonably determines a shorter notice period or immediate removal is necessary to protect Plan assets.

##### 8.10 SUCCESSOR TRUSTEE.

(A) Appointment. In the event of the resignation or the removal of a Trustee, where no other Trustee continues to service, the Employer must appoint a successor Trustee if it intends to continue the Plan. If two or more persons hold the position of Trustee, in the event of the removal of one such person, during any period the selection of a replacement is pending, or during any period such person is unable to serve for any reason, the remaining person or persons will act as the Trustee. If the Employer fails to appoint a successor Trustee as of the effective date of the Trustee resignation or removal and no other Trustee remains, the Trustee will treat the Employer as having appointed itself as Trustee and as having filed the Employer's acceptance of appointment as successor Trustee with the former Trustee.

(B) Automatic Successor. Any corporation which succeeds to the trust business of the Trustee, or results from any merger or consolidation to which the Trustee is a party, or is the transferee of substantially all the Trustee's assets, will be the successor to the Trustee under this Trust. The successor Trustee will possess all rights, duties and powers under this Trust as if the successor Trustee were the original Trustee. Neither the Trustee nor the successor Trustee need provide notice to any interested person of any transaction resulting in a successor Trustee. The successor Trustee need not file or execute any additional instrument or perform any additional act to become successor Trustee.

8.11 VALUATION OF TRUST. The Trustee will value the Trust as of each Accounting Date to determine the fair market value of the Trust assets. The Trustee will value the Trust on such other date(s) the Administrative Services Provider may direct.

8.12 PARTICIPANT DIRECTION OF INVESTMENT. Consistent with the Administrative Services Provider's policy adopted under Section 5.02(i), the Trustee may consent in writing to permit Participants in the Plan to direct the investment to the Trust assets. The Administrative Services Provider will advise the Trustee of the portion of the Trust credited to each Participant's Account under the Plan, and subject to such Participant direction. As a condition of Participant direction, the Trustee may

impose such conditions, limitations and other provisions as the Trustee may deem appropriate and as are consistent with the Administrative Services Provider's policy. The Trustee will report to the Administrative Services Provider the net income, gain or losses incurred by each Participant directed Account separately from the net income, gain or losses incurred by the general Trust during the Trust Year.

8.13 THIRD PARTY RELIANCE. No person dealing with the Trustee will be obliged to see to the proper application of any money paid or property delivered to the Trustee, or to inquire whether the Trustee has acted pursuant to any of the terms of the Trust. Each person dealing with the Trustee may act upon any notice, request or representation in writing by the Trustee, or by the Trustee's duly authorized agent, and will not be liable to any person whomsoever in so doing. The certificate of the Trustee that it is acting in accordance with the Trust will be conclusive in favor of any person relying on the certificate.

8.14 INVALIDITY OF ANY TRUST PROVISION. If any clause or provision of this Article VIII proves to be or is adjudged to be invalid or void for any reason, such void or invalid clause or provision will not affect any of the other provisions of this Article VIII and the balance of the Trust provisions will remain operative.

8.15 EXCLUSIVE BENEFIT. The Trustee will hold all the assets of the Trust for the exclusive benefit of the Participants and their Beneficiaries and neither the Employer nor the Trustee will use or divert any part of the corpus or income of the Trust for purposes other than the exclusive benefit of the Participants and Beneficiaries of the Plan. The Employer will not have any right to the assets held by the Trustee and the Trust assets will not be subject to the claims of the Employer's creditors or, except as provided in Section 4.06, of the creditors of any Participant or Beneficiary. No Participant or Beneficiary shall have any right to sell, assign, transfer or otherwise convey his/her Account or any interest in his/her Deferred Compensation. Notwithstanding the foregoing, the Administrative Services Provider may pay from a Participant's or Beneficiary's Account the amount the Administrative Services Provider finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary. The Trust created under the Employer's Plan is irrevocable and its assets will not inure to the benefit of the Employer.

8.16 SUBSTITUTION OF CUSTODIAL ACCOUNT OR ANNUITY CONTRACT. The

Employer may elect to use one or more custodial accounts or annuity contracts in lieu of or in addition to the Trust established in this Article VIII. Any such custodial account or annuity contract must satisfy the requirements of Code §457(g)(3) and applicable Treasury regulations.

**8.17 GROUP TRUST AUTHORITY.** Notwithstanding any contrary provision in this Plan, the Trustee may, unless restricted in writing by the Administrative Services Provider, transfer assets of the plan to a group trust that is operated or maintained exclusively for the commingling and collective investment of monies provided that the funds in the group trust consist exclusively of trust assets held under plans qualified under Code section 401(a), individual retirement accounts that are exempt under Code section 408(e), and eligible governmental plans that meets the requirements of Code section 457(b). For this purpose, a trust includes a custodial account that is treated as a trust under Code section 401(f) or under Code section 457(g)(3). For purposes of valuation, the value of the interest maintained by the Plan in such group trust shall be the fair market value of the portion of the group trust held for Plan, determined in accordance with generally recognized valuation procedures.

## **ARTICLE IX AMENDMENT, TERMINATION, TRANSFERS**

**9.01 AMENDMENT BY EMPLOYER / SPONSOR.** The Employer has the right at any time and from time to time:

(a) To amend this Plan and Trust Agreement in any manner it deems necessary or advisable in order to continue the status of this Plan as an Eligible 457 Plan; and

(b) To amend this Plan and Trust Agreement in any other manner, including deletion, substitution or modification of any Plan or Trust.

The Employer must make all amendments in writing. The Employer may amend the Plan by addenda, by separate amendment, or by restatement of the Plan. Each amendment must state the date to which it is either retroactively or prospectively effective. The Employer also may not make any amendment that affects the rights, duties or responsibilities of the Trustee or the Administrative Services Provider without the written consent of the affected Trustee or the Administrative Services Provider.

The Employer will accept amendments from the Administrative Services Provider (including adoption of a substitute Plan and Trust) without being required to re-execute the Plan, provided that the

amendments are necessary to continue the Plan as an Eligible 457 Plan.

**9.02 TERMINATION / FREEZING OF PLAN.** The Employer has the right, at any time, to terminate this Plan or to cease (freeze) further Deferral Contributions to the Plan. Upon termination or freezing of the Plan, the provisions of the Plan (other than provisions permitting continued Deferral Contributions) remain operative until distribution of all Accounts. Upon Plan termination, the Administrative Services Provider or Trustee shall distribute to Participants and Beneficiaries all Deferred Compensation as soon as is reasonably practicable following termination.

**9.03 TRANSFERS.** The Plan: (a) may accept a Transfer of a Participant's Account in another employer's Eligible 457 Plan; or (b) may Transfer a Participant's (or Beneficiary's) Account in this Plan to the another employer's Eligible 457 Plan. The other plan involved in the Transfer must provide for Transfers. The Participant or Beneficiary, after the Transfer will have Deferred Compensation in the recipient plan at least equal to his/her Deferred Compensation in the transferring plan immediately before the Transfer. Any Transfer also must comply with applicable Treasury regulations, and in particular Treas. Reg. §§1.457-10(b)(2) as to post-severance transfers between Eligible 457 Plans; 1.457-10(b)(3) as to transfers of all assets between Eligible 457 Plans; and 1.457-10(b)(4) as to transfers between Eligible 457 Plans of the same Employer. The Administrative Services Provider will credit any Transfer accepted under this Section 9.03 to the Participant's Account and will treat the transferred amount as a Deferral Contribution for all purposes of this Plan except such Transfer will not be treated as a Deferral Contribution subject to the limitations of Article III. The Plan's Transfer of any Participant's or Beneficiary's Account under this Section 9.03 completely discharges the Employer, the Administrative Services Provider, the Trustee and the Plan from any liability to the Participant or Beneficiary for any Plan benefits.

**9.04 PURCHASE OF PERMISSIVE SERVICE CREDIT.** A Participant, prior to otherwise incurring a distributable event under Article IV, may direct the Trustee to transfer (as of January 1, 2002, or later) all or a portion of his/her Account to a governmental defined benefit plan (under Code §414(d)) for: (a) the purchase of permissive service credit (under Code §415(n)(3)(A)) under such plan, or (b) the repayment of contributions and earnings previously refunded with respect to a forfeiture of service credited under the plan (or under another governmental plan within the same State) to which Code §415 does not apply by reason of Code §415(k)(3).

**457 Governmental Plan and Trust**

**IN WITNESS WHEREOF**, the undersigned has executed this Plan and Trust to become effective the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ for the:

\_\_\_\_\_  
(Plan Name)

By: \_\_\_\_\_  
(signature)

\_\_\_\_\_  
(printed name)

\_\_\_\_\_  
(title/role)

A handwritten signature in black ink, consisting of several loops and a final flourish.

**CITY OF LODI DEFERRED COMPENSATION PLAN**

**Effective Date of This Document December 31, 2011**

Neither The Hartford nor any of its employees can provide legal or tax advice in connection with the execution of this specimen document. Prior to execution of this document, you should consult with your legal or tax advisor on whether this document is appropriate for your plan.

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**457(b) PLAN DOCUMENT**  
**DEFERRED COMPENSATION PLAN**  
**PREAMBLE**

Adoption of Plan

The City of Lodi Deferred Compensation Plan (hereinafter "the Plan"), an eligible deferred compensation plan within the meaning of Section 457(b) of the Internal Revenue Code of 1986, as amended (hereinafter the "Code"), of a State or local government as described in Code Section 457(e)(1)(A), adopted by City of Lodi (hereinafter the "Employer") effective December 31, 2011.

Purpose of Plan

The primary purpose of this Plan is to permit Employees of the Employer to enter into an agreement which will provide for deferral of payment of a portion of his or her current compensation until death, retirement, severance from employment, or other event, in accordance with the provisions of the Code Section 457(b), with other applicable provisions of the Code, and in accordance with the General Statutes of the State.

Status of Plan

It is intended that the Plan shall qualify as an eligible deferred compensation plan within the meaning of Code Section 457(b) sponsored by an eligible employer within the meaning of Code Section 457(e)(1)(A), i.e., a State, political subdivision of a State, and agency or instrumentality of a State or political subdivision of a State.

Tax Consequences of Plan

The Employer does not and cannot represent or guarantee that any particular federal or State income, payroll, or other tax consequence will occur by reason of participation in this Plan. A Participant should consult with his or her own counsel or other representative regarding all tax or other consequences of participation in this Plan.

## SECTION I DEFINITIONS

### 1.1 Plan Definitions

For purposes of this Plan, the following words and phrases have the meaning set forth below, unless a different meaning is plainly required by the context:

**An "Account Balance"** means the bookkeeping account maintained with respect to each Participant which reflects the value of the deferred Compensation credited to the Participant, including the Participant's Annual Deferrals, the earnings or loss of the Trust Fund (net of Trust Fund expenses) allocable to the Participant, any transfers for the Participant's benefit, and any distribution made to the Participant or the Participant's Beneficiary. If a Participant has more than one Beneficiary at the time of the Participant's death, then a separate Account Balance shall be maintained for each Beneficiary. The Account Balance includes any account established under Section VII for rollover contributions and plan-to-plan transfers made for a Participant, the account established for a Beneficiary after a Participant's death, and any account or accounts established for an alternate payee (as defined in Code Section 414(p)(8)).

The **"Administrator"** means the Employer. The term Administrator includes any person or persons, committee, or organization appointed by the Employer to administer the Plan.

**An "Annual Deferral"** means the amount of Compensation deferred in any calendar year.

The **"Beneficiary"** of a Participant means the person or persons (or, if none, the Participant's estate) who is entitled under the provisions of the Plan to receive a distribution in the event the Participant dies before receiving distribution of his or her entire interest under the Plan.

The **"Code"** means the Internal Revenue Code of 1986, as now in effect or as hereafter amended from time to time. Reference to a Code Section includes such section and any comparable section or sections of any future legislation that amends, supplements, or supersedes such section.

The **"Compensation"** of a Participant means all cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includible in the Employee's gross income for the calendar year, including, as applicable, compensation attributable to services as an independent contractor, plus amounts that would be cash compensation for services to the Employer includible in the Employee's gross income for the calendar year but for a compensation reduction election under Code Section 125, 132(f), 401(k), 403(b), or 457(b) (including an election to defer compensation under Section 11).

Any payments described below made to a Participant after a Severance from Employment shall qualify as Compensation for purposes of the Plan, but only if the payments are made by the later of (a) the end of the calendar year in which the Severance from Employment occurred or (b) within 2 ½ months of such Severance from Employment:

- (a) Payments that, absent a Severance from Employment, would have been paid to the Participant while the Participant continued in employment with the Employer, but only if such payments constitute regular compensation for services during the Participant's regular working hours, compensation for services outside the Participant's regular working hours (such as overtime or a shift differential), commissions, bonuses or other similar compensation;
- (i) Payments for accrued bona fide sick, vacation or other leave, but only if the Participant would have been able to use the leave if employment had continued; and

Any payment that is not described above shall not be considered Compensation if it is paid after the date of the Participant's Severance from Employment, even if it is paid within 2 ½ months of such date. Thus, for example, Compensation does not include severance pay.

For years beginning after December 31, 2008, (a) a Participant receiving a differential wage payment, as defined by Code §3401(h)(2), by reason of qualified military service (within the meaning of Code Section 414(u)), is treated as an Employee of the Employer making the payment and (b) the differential wage payment is treated as Compensation.

An "**Employee**" means each natural person who is employed by the Employer as a common law employee on a full time basis and any employee in an elected or appointed position; provided, however, that the term Employee shall not include a leased employee or any employee who is included in a unit of employees covered by a collective bargaining agreement that does not specifically provide for participation in the Plan.

Any individual who is not treated by the Employer as a common law employee of the Employer shall be excluded from Plan participation even if a court or administrative agency determines that such individual is a common law employee of the Employer, unless the Employer has included the individual in Plan participation as an independent contractor.

An "**Employer**" means the eligible employer (within the meaning of Code Section 457(e)(1)) that has adopted the Plan. In the case of an eligible employer that is an agency or instrumentality of a political subdivision of a State within the meaning of Code Section 457(e)(1)(A), the term Employer shall include any other agency or instrumentality of the same political subdivision that has adopted the Plan.

"**Includible Compensation**" means, with respect to a taxable year, the Participant's compensation as defined in Code Section 415(c)(3) and the regulations thereunder, for services performed for the Employer. The amount of Includible Compensation is determined without regard to any community property laws.

"**Normal Retirement Age**" means age 50.

In the event a Participant is a qualified police or firefighter (as defined under Code Section 415(b)(2)(H)(ii)(I)) Normal Retirement Age means age 50.

A Participant's Normal Retirement Age must be the same as his or her normal retirement age under any other eligible deferred compensation plan or plans sponsored by the Employer. The designation of a Normal Retirement Age under the Plan does not compel retirement with the Employer.

The "**Participant**" means an individual who is currently deferring Compensation, or who has previously deferred Compensation under the Plan by salary reduction and who has not received a distribution of his or her entire benefit under the Plan. Only individuals who perform services for the Employer as an Employee may defer Compensation under the Plan.

"**Severance from Employment**" means the date that the Employee dies, retires, or otherwise has a severance from employment with the Employer, as determined by the Administrator (and taking into account guidance issued under the Code). Solely for the purpose of determining whether the Participant is entitled to receive a distribution of his or her Account Balance pursuant to Section 6.2, a Participant shall be treated as having been severed from employment during any period the Participant is performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code) while on active duty for a period of more than 30 days.

The "**State**" means the State that is the Employer or of which the Employer is a political subdivision, and any agency, or instrumentality, including any agency or instrumentality of a political subdivision of the State, or the State in which the Employer is located.

The "**Trust Fund**" means the trust fund created under and subject to a trust agreement or a custodial account or contract described in Code Section 401(f) held on behalf of the Plan.

The "**Valuation Date**" means each business day.

## **SECTION II PARTICIPATION AND CONTRIBUTIONS**

### **2.1 Eligibility**

Each Employee shall be eligible to participate in the Plan and defer Compensation hereunder immediately upon becoming employed by the Employer.

### **2.2 Election**

An Employee may elect to become a Participant by executing an election to defer a portion of his or her Compensation (and have that amount contributed as an Annual Deferral on his or her behalf) and filing it with the Administrator. This participation election shall be made on the deferral agreement provided by the Administrator under which the Employee agrees to be bound by all the terms and conditions of the Plan. Any such election shall remain in effect until a new election is filed. The Administrator may establish a minimum deferral amount, and may change such minimums from time to time. The deferral agreement shall also include designation of investment funds and a designation of Beneficiary.

- (a) **Special Deferral Election of Sick, Vacation, or Back Pay:** A Participant who has not had a Severance from Employment may authorize a special election to defer accumulated sick pay, accumulated vacation pay, and back pay for any calendar month if an election to defer is entered into before the beginning of the month in which the amounts would otherwise be paid or made available and the Participant is an Employee on the date the amounts would otherwise be paid or made available. For this purpose, Compensation that would otherwise be paid for a payroll period that begins before Severance from Employment is treated as an amount that would otherwise be paid or made available before an Employee has a Severance from Employment. In addition, a Participant who is a former Employee may authorize a special election to defer accumulated sick pay, accumulated vacation pay, and back pay that is paid by the later of 2 ½ months following the date of the Participant's Severance from Employment or the end of the calendar year in which the Severance from Employment occurred, provided that the special election to defer is entered into before the amount is currently available.

### **2.3 Commencement of Participation**

An Employee shall become a Participant as soon as administratively practicable following the date the Employee files an election pursuant to Section 2.2. Such election shall become effective no later than the calendar month following the month in which the election is made. A new Employee may defer compensation payable in the calendar month during which the Participant first becomes an Employee if an agreement providing for the deferral is entered into on or before the first day on which the Participant performs services for the Employer.

## **2.4 Amendment of Annual Deferral Election**

Subject to other provisions of the Plan, a Participant may at any time revise his or her participation election, including a change of the amount of his or her Annual Deferrals, his or her investment direction and his or her designated Beneficiary. Unless the election specifies a later effective date, a change in the amount of the Annual Deferrals shall take effect as of the first day of the next following month or as soon as administratively practicable if later. A change in the investment direction shall take effect as of the date provided by the Administrator on a uniform basis for all Employees. A change in the Beneficiary designation shall take effect when the election is accepted by the Administrator.

## **2.5 Information Provided by the Participant**

Each Employee enrolling in the Plan should provide to the Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Administrator to administer the plan, including, without limitation, whether the Employee is a participant in any other eligible plan under Code Section 457(b).

## **2.6 Contributions Made Promptly**

Annual Deferrals by the Participant under the Plan shall be transferred to the Trust Fund within a period that is not longer than is reasonable for the proper administration of the Participant's Account Balance. For this purpose, Annual Deferrals shall be treated as contributed within a period that is not longer than is reasonable for the proper administration if the contribution is made to the Trust Fund within 15 business days following the end of the month in which the amount would otherwise have been paid to the Participant, or earlier if required by law.

## **2.7 Employer Contributions**

Nothing in this Plan prohibits the Employer from making annual deferrals to the Account Balance of a Participant on a non-elective basis, subject to the Participant's contribution limits in Section 111.

## **2.8 Leave of Absence**

Unless an election is otherwise revised, if a Participant is absent from work by leave of absence, Annual Deferrals under the Plan shall continue to the extent that Compensation continues.

## **2.9 Disability**

A disabled Participant (as determined by the Administrator) may elect Annual Deferrals during any portion of the period of his or her disability to the extent that he or she has actual Compensation (not imputed Compensation and not disability benefits) from which to make contributions to the Plan and has not had a Severance from Employment.

## **2.10 Protection of Persons Who Serve in a Uniformed Service**

**An** Employee whose employment is interrupted by qualified military service under Code Section 414(u) or who is on a leave of absence for qualified military service under Code Section 414(u) may elect to make additional Annual Deferrals upon resumption of employment with the Employer equal to the maximum Annual Deferrals that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Annual Deferrals, if any, actually made for the Employee during the period of the interruption or leave. This right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave).

**A** reemployed Employee shall also be entitled to **an** allocation of any additional Employer Contributions, if applicable, that such Employee would have received under the Plan had the Employee continued to be employed as an eligible Employee during the period of qualified military service. Such restorative Employer Contributions (without interest), if applicable, shall be remitted by the Employer to the Plan on behalf of the Employee within 90 days after the date of the Employee's reemployment or, if later, as of the date the contributions are otherwise due for the year in which the applicable qualified military service was performed.

## **2.11 Corrective Measures**

In the event that an otherwise eligible Employee is erroneously omitted from Plan participation, or an otherwise ineligible individual is erroneously included in the Plan, the Employer shall take such corrective measures as may be permitted by applicable law. Such measures may include, in the case of an erroneously omitted Employee, contributions made by the Employer to the Plan on behalf of such Employee equal to the missed deferral opportunity, subject to the Participant's contribution limits in Section 111, and, in the case of an erroneously included individual, a payment by the Employer to such individual of additional compensation in **an** amount equal to the amount of the individual's elective deferrals under the Plan.



## **SECTION III LIMITATIONS ON AMOUNTS DEFERRED**

### **3.1 Basic Annual Limitation**

- (a) The maximum amount of the Annual Deferral and, if applicable, Employer Contributions under the Plan for any calendar year shall not exceed the lesser of
  - (i) The "applicable dollar amount" (as defined in paragraph (b) below); or
  - (ii) The Participant's Includible Compensation for the calendar year.
- (b) The "applicable dollar amount" means the amount established under Code Section 457(e)(15), as indexed, and in accordance with 3.4(a).
- (c) Rollover amounts received by the Plan under Treasury Regulation Section 1.457-10(e) and any plan-to-plan transfer into the Plan made pursuant to Section 7.2 shall not be applied against the Annual Deferral limit.

### **3.2 Age 50 Catch-up Annual Deferral Contributions**

A Participant who will attain age 50 or more by the end of a calendar year is permitted to elect an additional amount of Annual Deferral for the calendar year, up to the maximum age 50 catch-up Annual Deferral limit under §414(v)(2), as indexed.

The amount of the age 50 catch-up Annual Deferral for any calendar year cannot exceed the amount of the Participant's Compensation, reduced by the amount of the elective deferred compensation, or other elective deferrals, made by the Participant under the Plan and in accordance with 3.4(a).

The age 50 catch-up Annual Deferral limit is not available to a Participant for any calendar year for which the Special Section 457 Catch-up Limitation described in Section 3.3 is available and applied.

### **3.3 Special Section 457 Catch-up Limitation**

Notwithstanding the provisions of Sections 3.1 and 3.2, with respect to a year that is one of a Participant's last three (3) calendar years ending before the year in which the Participant attains Normal Retirement Age and the amount determined under this Section 3.3 exceeds the amount computed under Sections 3.1 and 3.2, then the Annual Deferral limit under this Section 3.3 shall be the lesser of

- (a) **An** amount equal to two (2) times the Section 3.1 Applicable Dollar Amount for such year; or
- (b) The sum of:

- (i) **An** amount equal to (A) the aggregate Section 3.1 limit for the current year plus each prior calendar year beginning after December 31, 2001, during which the Participant was an Employee under the Plan, minus (B) the aggregate amount of Compensation that the Participant deferred under the Plan during such years, plus
- (ii) **An** amount equal to (A) the aggregate limit referred to in Code Section 457(b)(2) for each prior calendar year beginning after December 31, 1978, and before January 1, 2002, during which the Participant was an Employee (determined without regard to Sections 3.2 and 3.3), minus (B) the aggregate contributions to Pre-2002 Coordination Plans (as defined in Section 3.4(c)) made by or on behalf of the Participant for such years.

However, in no event can the deferred amount be more than the Participant's Compensation for the year.

### 3.4 Special Rules

For purposes of this Section 111, the following rules shall apply:

- (a) Participant Covered By More Than One Eligible Plan. If the Participant is or has been a participant in one or more other eligible plans within the meaning of Code Section 457(b), then this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations of this Section 111. For this purpose, the Administrator shall take into account any other such eligible plan maintained by the Employer and shall also take into account any other such eligible plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan.
- (b) Pre-Participation Years. In applying Section 3.3, a year shall be taken into account only if (i) the Participant was eligible to participate in the Plan during all or a portion of the year and (ii) Compensation deferred, if any, under the Plan during the year was subject to the Basic Annual Limitation described in Section 3.1 or any other plan ceiling required by Code Section 457(b).
- (c) Pre-2002 Coordination Years. For purposes of Section 3.3(b)(ii)(B), "contributions to Pre-2002 Coordination Plans" means any employer contribution, salary reduction or elective contribution under any other eligible Code Section 457(b) plan, or a salary reduction or elective contribution under any Code Section 401(k) qualified cash or deferred arrangement, Code Section 402(h)(1)(B) simplified employee pension (SARSEP), Code Section 403(b) annuity contract, and Code Section 408(p) simple retirement account, or under any plan for which a deduction is allowed because of a contribution to an organization described in Code Section 501(c)(18), including plans, arrangements or accounts maintained by the Employer or any employer for whom the Participant performed services. However, the contributions for any calendar year are only taken into account for purposes of Section 3.3(b)(ii)(B) to the extent that the total of such contributions does not exceed the aggregate limit referred to in Code Section 457(b)(2) for that year.

- (d) Disregard Excess Deferral. For purposes of Sections 3.1, 3.2, and 3.3, an individual is treated as not having deferred compensation under a plan for a prior taxable year if excess deferrals under the plan are distributed, as described in Section 3.5. To the extent that the combined deferrals for pre-2002 years exceeded the maximum deferral limitations, the amount is treated as an excess deferral for those prior years.

### **3.5 Correction of Excess Deferrals**

If the Annual Deferral on behalf of a Participant for any calendar year exceeds the limitations described above, or the Annual Deferral on behalf of a Participant for any calendar year exceeds the limitations described above when combined with other amounts deferred by the Participant under another eligible deferred compensation plan under Code Section 457(b) for which the Participant provides information that is accepted by the Administrator, then the Annual Deferral, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto), shall be distributed to the Participant as soon as administratively practicable after the Administrator determines that the amount is an excess deferral.

## **SECTION IV INVESTMENT RESPONSIBILITIES**

### **4.1 Investment of Deferred Amount**

Each Participant or Beneficiary shall direct the investment of amounts held in his or her Account Balance under the Plan among the investment options of the Trust Fund. The investment of amounts segregated on behalf of an alternate payee pursuant to a Plan approved domestic relations order (as defined under Code Section 414(p)) may be directed by such alternate payee to the extent provided in such order. In the absence of such direction, such amounts shall be invested in the same manner as they were immediately before such segregation was made on account of such order. Each Account Balance shall share in any gains or losses of the investment(s) in which such account is invested.

### **4.2 Investment Election for Future Contributions**

A Participant may amend his or her investment election at such times and by such manner and form as prescribed by the Administrator. Such election will, unless specifically stated otherwise, apply only to future amounts contributed under the Plan.

### **4.3 Investment Changes for an Existing Account Balance**

The Participant, Beneficiary, alternate payee, or Administrator may elect to transfer amounts in his Account Balance among and between those investments available under the Trust Fund at such times and by such manner and form prescribed by the Administrator, subject further to any restrictions or limitations placed on any investment by the Administrator to be uniformly applied to all Participants.

### **4.4 Investment Responsibility**

To the extent that a Participant, Beneficiary, or alternate payee exercises control over the investment of amounts credited to his Account Balance, the Employer, the Administrator, and any other fiduciary of the Plan shall not be liable for any losses that are the direct and necessary result of investment instructions given by a Participant, Beneficiary or an alternate payee.

### **4.5 Default Investment Fund**

The Employer shall maintain a Default Investment Fund which shall be held and administered under the Trust Fund. Any Participant who does not make an investment election on the deferral agreement provided by the Administrator will have his contributions invested in the Default Investment Fund until such time he provides investment direction under sections 4.2 and 4.3. Additionally, a Beneficiary or alternate payee who does not make an investment election will have his Account Balance invested in the Default Investment Fund until such time he provides investment direction under section 4.3. The interest of each participant, Beneficiary, or alternate payee under the Plan in the Default Investment Fund shall be an undivided interest.

#### **4.6 Statements**

The Administrator will cause to be issued statements periodically to reflect the contributions and actual earnings posted to the Account Balances.

## **SECTION V LOANS**

### **5.1 No Loans**

There shall be no loans made to Participants from the Plan.

## **SECTION VI DISTRIBUTIONS**

### **6.1 Distributions from the Plan**

- (a) Earliest Distribution Date. Payments from a Participant's Account Balance shall not be made earlier than:
- (i) the Participant's Severance from Employment pursuant to Section 6.2
  - (ii) the Participant's death pursuant to Section 6.3
  - (iii) Plan termination under Section 10.3
  - (iv) an unforeseeable emergency withdrawal pursuant to Section 6.10(a), if permitted under the Plan
  - (v) a de minimis account balance distribution pursuant to Section 6.10(b), if permitted under the Plan
  - (vi) a rollover account withdrawal pursuant to Section 6.10(c), if permitted under the Plan
  - (vii) attainment of age 70 ½ withdrawal pursuant to Section 6.10(d), if permitted under the Plan
  - (viii) Qualified Military Service Deemed Severance withdrawal pursuant to Section 6.10(e), if permitted under the Plan
  - (ix) Qualified Military Reservist withdrawal pursuant to Section 6.10(f), if permitted under the Plan
  - (x) Qualified Distributions for Retired Public Safety Officers pursuant to Section 6.11, if permitted under the Plan
- (b) Latest Distribution Date. In no event shall any distribution under this Section VI begin later than the Participant's "required beginning date". Such required minimum distributions must be made in accordance with Section 6.6.
- (c) Amount of Account Balance. Except as provided in Section 6.3, the amount of any payment under this Section VI shall be based on the amount of the Account Balance as of the Valuation Date.

### **6.2 Benefit Distributions Upon Severance from Employment**

Upon Severance from Employment (other than due to death), a Participant may elect to commence distribution of benefits at any time after Severance from Employment by filing a

request with the Administrator before the date on which benefits are to commence. However, in no event may distribution of benefits commence later than his or her "required beginning date".

Distributions required to commence under this section shall be made in the form of benefit provided under Section 6.5. Distributions postponed until the Participant's "required beginning date" will be made in a manner that meets the requirements of Section 6.6.

### **6.3 Distributions on Account of Participant's Death**

Upon receipt of satisfactory proof of the Participant's death, the designated Beneficiary may file a request with the Administrator to elect a form of benefit provided under Section 6.5 and made in a manner that meets the requirements of Section 6.6.

- (a) Death of Participant Before Distributions Begin. If the Participant dies before his or her distributions begin, the designated Beneficiary may elect to have distributions to be made (i) in full within 5 years of the Participant's death (5-year rule) or (ii) in installments over the designated Beneficiary's "life expectancy" (life expectancy rule).

If the designated Beneficiary does not make an election by September 30 of the year following the year of the Participant's death, the Participant's Account Balance will be distributed in a lump sum payment by December 31 of the calendar year containing the fifth anniversary of the Participant's death or if the Participant's spouse is the sole designated Beneficiary by December 31 of the year the Participant would have attained age 70 ½.

- (b) Death of Participant On or After Date Distributions Begin. If the Participant dies on or after his or her distributions began, the Participant's Account Balance shall be paid to the Beneficiary at least as rapidly as under the payment option used before the Participant's death.

### **6.4 Distribution of Small Account Balances Without Participant's Consent**

Notwithstanding any other provision of the Plan to the contrary, if the amount of a Participant's or Beneficiary's Account Balance (including the rollover contribution separate account) is not in excess of the amount specified below on the date that payments commence under Section 6.2 or on the date the Administrator is notified of the Participant's death, the Administrator may direct payment without the Participant's or Beneficiary's consent as soon as practicable following the Participant's retirement, death, or other Severance from Employment.

- (a) The Plan does not provide for distribution of small Account Balances without Participant or Beneficiary consent.

### **6.5 Forms of Distribution**

In an election to commence benefits under Section 6.2, a Participant entitled to a distribution of benefits under this Section VI may elect to receive payment in any of the following forms of distribution:



- (a) a lump sum payment of the Participant's total Account Balance.
- (b) partial distribution of the Participant's Account Balance.
- (c) in a series of installments over a period of years (payable on a monthly, quarterly, semi-annual or annual basis) which extends no longer than the life expectancy of the Participant as permitted under Code Section 401(a)(9).
- (d) a purchase of a single premium nontransferable annuity contract for such term and in such form as the Participant selects that provides for payments in the form of **an** irrevocable annuity each calendar year of amounts not less than the amount required under Code Section 401(a)(9).

## **6.6 Minimum Distribution Requirements**

- (a) General Rules.

Notwithstanding anything in this Plan to the contrary, distributions from this Plan shall commence and be made in accordance with Code Section 401(a)(9) and the regulations promulgated thereunder. Additionally, the requirements of this Section 6.6 will take precedence over any inconsistent provisions of the Plan.

- (b) Time and Manner of Distribution.

- (i) Required Beginning Date. The Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's "required beginning date".
- (ii) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
  - (A) If the Participant's surviving spouse is the Participant's sole "designated Beneficiary", then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant dies, or by December 31 of the calendar year in which the Participant would have attained age 70 ½, if later.
  - (B) If the Participant's surviving spouse is not the Participant's sole "designated Beneficiary" (i.e., multiple beneficiaries), then distributions to the "designated Beneficiaries" will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
  - (C) If the Participant's sole "designated Beneficiary" is not the Participant's spouse, then distributions to the "designated Beneficiary" will begin by

December 31 of the calendar year immediately following the calendar year in which the Participant died.

- (D) If there is no "designated Beneficiary" as of September 30 of the year following the year of the Participant's death, the participant's Account Balance will be distributed in a lump sum payment by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (E) If the Participant's surviving spouse is the Participant's sole "designated Beneficiary" and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this subparagraph (b)(ii), other than subsection (b)(ii)(A), will apply as if the surviving spouse were the Participant.

For purposes of this subparagraph (ii) and paragraph (d), unless subsection (b)(ii)(D) applies, distributions are considered to begin on the Participant's "required beginning date". If subsection (b)(ii)(E) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under subsection (b)(ii)(A). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's "required beginning date" (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under subsection (b)(ii)(A)), the date distributions are considered to begin is the date distributions actually commence.

- (iii) Death of Participant On or After Distributions Begin. If the Participant dies on or after distributions begin and before depleting his or her Account Balance, distributions must commence to the "designated Beneficiary" by December 31 of the calendar year immediately following the calendar year in which the Participant died.
  - (iv) Forms of Distribution. Unless the Participant's Account Balance is distributed in the form of an annuity contract or in a lump sum on or before the Participant's "required beginning date", as of the first distribution calendar year, distributions will be made in accordance with paragraphs (c) and (d). If the Participant's interest is distributed in the form of an annuity contract, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9).
- (c) **Required Minimum Distributions During the Participant's Lifetime.**
- (i) Amount of Required Minimum Distribution For Each "Distribution Calendar Year". During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:
    - (A) The quotient obtained by dividing the "Participant's account balance" by the distribution period in the Uniform Lifetime Table set forth in Treasury

Regulation Section 1.401(a)(9)-9, Q&A-2 using the Participant's age as of the Participant's birthday in the "distribution calendar year"; or

- (B) if the Participant's sole "designated Beneficiary" for the "distribution calendar year" is the Participant's spouse and the spouse is more than 10 years younger than the Participant, the quotient obtained by dividing the "Participant's account balance" by the distribution period in the Joint and Last Survivor Table set forth in Treasury Regulation Section 1.401(a)(9)-9, Q&A-3 using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the "distribution calendar year".
- (ii) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this paragraph (c) beginning with the first "distribution calendar year" and up to and including the "distribution calendar year" that includes the Participant's date of death.
- (d) Required Minimum Distributions After Participant's Death.

For purposes of this Section 6.6(d), the Participant's and Beneficiary's "life expectancy" determination will use the Single Life Table set forth in Treasury Regulation Section 1.401(a)(9)-9, Q&A-1.

(i) Death On or After Date Distributions Begin.

(A) Participant Survived by Designated Beneficiary.

If the Participant dies on or after the date distributions begin and there is a "designated Beneficiary", the minimum amount that will be distributed for each "distribution calendar year" after the year of the Participant's death is the quotient obtained by dividing the "Participant's account balance" by the longer of the remaining "life expectancy" of the Participant or the remaining "life expectancy" of the Participant's "designated Beneficiary", determined as follows:

- (1) The Participant's remaining "life expectancy" is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
- (2) If the Participant's surviving spouse is the Participant's sole "designated Beneficiary", the remaining "life expectancy" of the surviving spouse is calculated for each "distribution calendar year" after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For "distribution calendar years" after the year of the surviving spouse's death, the remaining "life expectancy" of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in

the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

- (3) If the Participant's surviving spouse is not the Participant's sole "designated Beneficiary" (i.e., multiple beneficiaries), the "designated Beneficiaries" remaining "life expectancy" is calculated using the age of the oldest Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.
- (4) If the Participant's sole "designated beneficiary" is not the Participant's spouse, the "designated Beneficiary's" remaining "life expectancy" is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(B) No Designated Beneficiary.

If the Participant dies on or after the date distributions begin and there is no "designated Beneficiary" as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each "distribution calendar year" after the year of the Participant's death is the quotient obtained by dividing the "Participant's account balance" by the Participant's remaining "life expectancy" calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(ii) Death Before Date Distributions Begin.

(A) Participant Survived by Designated Beneficiary.

Except as provided in this Section, if the Participant dies before the date distributions begin and there is a "designated Beneficiary", the minimum amount that will be distributed for each "distribution calendar year" after the year of the Participant's death is the quotient obtained by dividing the "Participant's account balance" by the remaining "life expectancy" of the Participant's "designated Beneficiary", determined as follows:

- (1) If the Participant's surviving spouse is the Participant's sole "designated Beneficiary", the remaining "life expectancy" of the surviving spouse is calculated for each "distribution calendar year" after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year.
- (2) If the Participant's surviving spouse is not the Participant's sole "designated Beneficiary" (i.e., multiple beneficiaries), the "designated Beneficiary's" remaining "life expectancy" is

calculated using the age of the oldest Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

- (3) If the Participant's sole "designated beneficiary" is not the Participant's spouse, the "designated Beneficiary's" remaining "life expectancy" is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(B) No Designated Beneficiary.

If the Participant dies before the date distributions begin and there is no "designated Beneficiary" as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(C) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin.

If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole "designated Beneficiary", and the surviving spouse dies before distributions are required to begin to the surviving spouse under subsection (b)(ii)(A), this subparagraph (d)(ii) will apply as if the surviving spouse were the Participant.

(e) Definitions.

- (i) A Participant's "required beginning date" is April 1 of the year that follows the later of (1) the calendar year the Participant attains age 70 ½ or (2) retires due to Severance from Employment. If the Participant postpones the required distribution due in calendar year he or she attains age 70 ½ or severs employment, to the "required beginning date", the second required minimum distribution must be taken by the end of that year.
- (ii) Participant's "designated Beneficiary" means the individual who is designated as the Beneficiary under Section 8.1 and is the designated Beneficiary under Code Section 401(a)(9) and Treasury Regulation Section 1.401(a)(9)-4.
- (iii) A "distribution calendar year" means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first "distribution calendar year" is the calendar year the Participant attains age 70 ½ or retires, if later. For distributions beginning after the Participant's death, the first "distribution calendar year" is the calendar year in which distributions are required to begin under subparagraph (b)(ii).

The required minimum distribution for the Participant's first "distribution calendar year" will be made on or before the Participant's "required beginning date". The required minimum distribution for other "distribution calendar years", including the required minimum distribution for the "distribution calendar year" in which the Participant's "required beginning date" occurs, will be made on or before December 31 of that "distribution calendar year".

(iv) A married Participant's "life expectancy", whose spouse is the sole Beneficiary and is more than 10 years younger than the Participant, means the Participant's and spouse Beneficiary's life expectancy as computed by use of the Joint and Last Survivor Life Table under Treasury Regulation Section 1.401(a)(9)-9, Q&A 3. All other Participants will have his or her life expectancy computed by use of the Uniform Lifetime Table under Treasury Regulation Section 1.401(a)(9)-9, Q&A 2. A deceased Participant's or Beneficiary's "life expectancy" means his or her life expectancy as computed by use of the Single Life Table under Treasury Regulation Section 1.401(a)(9)-9, Q&A 1.

(v) A "Participant's account balance" means the Account Balance as of the last valuation date in the calendar year immediately preceding the "distribution calendar year" (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the Account Balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The Account Balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the "distribution calendar year" if distributed or transferred in the valuation calendar year.

(f) Special Provision Applicable to 2009 Required Minimum Distributions.

A Participant who would otherwise be required to receive a minimum distribution from the Plan in accordance with Code Section 401(a)(9) for the 2009 "distribution calendar year" may elect not to receive any such distribution that is payable with respect to the 2009 "distribution calendar year".

Notwithstanding the provisions of Section 6.9(b)(iii), the Administrator may permit a Participant who receives a minimum distribution from the Plan for the 2009 "distribution calendar year" to make a direct rollover of such distribution to an "eligible retirement plan" in accordance with the provisions of Section 6.9.

The Administrator may also permit a Participant or former Participant who has received a minimum distribution for the 2009 "distribution calendar year" to roll over such distribution back into the Plan, provided the requirements of Code Section 402(c), as modified by Notice 2009-82, extending the 60-day rollover deadline, and the requirements of Section 7.1 are otherwise satisfied. If the distribution received by the Participant included amounts in addition to the minimum required under Code Section 401(a)(9), the Administrator may allow the Participant to include a portion or all of the

amount that was not a minimum distribution in the Rollover Contribution made to the Plan in accordance with this paragraph.

The provisions of this Section 6.6(f) are effective for minimum payments made for the 2009 "distribution calendar year" and do not include any minimum payment that is made in 2009, but is attributable to a different year (i.e., the participant reached his required beginning date in 2008, but payment of the 2008 minimum is not made until 2009).

## **6.7 Payments to Minors and Incompetents**

If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits will be paid to such person as the Administrator or a court of competent jurisdiction may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

## **6.8 Procedure When Distributee Cannot Be Located**

The Administrator shall make all reasonable attempts to determine the identity and address of a Participant or a Participant's Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means (a) the mailing by certified mail of a notice to the last known address shown in the Administrator's records; (b) use of the Internal Revenue Service letter forwarding program under IRS Revenue Procedure 94-22; (c) use of a commercial locator service, the internet or other general search method; (d) use of the Social Security Administration search program; or (e) use such other methods as the Administrator believes prudent.

If the Participant or Beneficiary has not responded within 6 months, the Plan shall continue to hold the benefits due such person until, in the Administrator's discretion, the Plan is required to take other action under applicable law.

Notwithstanding the foregoing, if the Administrator is unable to locate a person entitled to benefits hereunder after applying the search methods set forth above, then the Administrator, in its sole discretion, may pay an amount that is immediately distributable to such person in a direct rollover to an individual retirement plan designated by the Administrator.

## **6.9 Direct Rollover**

- (a) A Participant or Beneficiary (or a Participant's former spouse who is the alternate payee under a domestic relations order, as defined in Code Section 414(p)) who is entitled to an "eligible rollover distribution" may elect, at the time and in the manner prescribed by the Administrator, to have all or any portion of the distribution paid directly to an "eligible retirement plan" specified by the Participant or Beneficiary in a direct rollover.
- (b) For purposes of this Section 6.9, an "eligible rollover distribution" means any distribution of all or any portion of a Participant's Account Balance, except that an eligible rollover distribution does not include (i) any distribution that is one of a series of substantially

equal periodic payment made not less frequently than annually for the life or life expectancy of the Participant or the joint lives or life expectancies of the Participant and the Participant's designated beneficiary, or for a specified period of ten years or more (ii) any distribution made as a result of an unforeseeable emergency, or (iii) any distribution that is a required minimum distribution under Code Section 401(a)(9).

In addition, an "eligible retirement plan" with respect to the Participant, the participant's spouse, or the Participant's spouse or former spouse who is an alternate payee under a domestic relations order as defined in Code Section 414(p) means any of the following: (i) an individual retirement account described in Code Section 408(a), (ii) an individual retirement annuity described in Code Section 408(b), (iii) an annuity plan described in Code Section 403(a), (iv) a qualified defined contribution plan described in Code Section 401(a), (v) an annuity contract described in Code Section 403(b), (vi) an eligible deferred compensation plan described in Code Section 457(b) that is maintained by a State, political subdivision of a State, or any agency or instrumentality of a State or political subdivision of a State, or (vii) effective for distributions made on or after January 1, 2008, a Roth IRA, as described in Code Section 408A, provided, that for distributions made before January 1, 2010, such rollover shall be subject to the limitations contained in Code Section 408A(c)(3)(B) .

Notwithstanding any other provision of this Section 6.9(b), a plan or contract described in clause (iii), (iv), (v), or (vi) above shall not constitute an "eligible retirement plan" with respect to a distribution of Roth Contributions unless such plan or contract separately accounts for such distribution, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

- (c) A Beneficiary who is not the spouse of the deceased participant may elect a direct rollover of a distribution to an individual retirement account described in Code Section 408(b) or to a Roth individual retirement account described in Code Section 408A(b) ("IRA"), provided that the distributed amount satisfies all the requirements to be an eligible rollover distribution. The direct rollover must be made to an IRA established on behalf of the designated Beneficiary that will be treated as an inherited IRA pursuant to the provisions of Code Section 402(c)(11). The IRA must be established in a manner that identifies it as an IRA with respect to a deceased Participant and also identifies the deceased Participant and the Beneficiary. This Section applies to distributions made on or after January 1, 2007.

## **6.10 Inservice Distributions**

- (a) Unforeseeable Emergency Distribution If the Participant who has not incurred a Severance from Employment or Beneficiary has an unforeseeable emergency, the Administrator may approve a single sum distribution of the amount requested or, if less, the maximum amount determined by the Administrator to be permitted to be distributed under this Section 6.10(a), Treasury Regulation Section 1.457-6(c) or other regulatory guidance. The Administrator shall determine whether an unforeseeable emergency exists



based on relevant facts and circumstances, and Treasury Regulation Section 1.457-6(c) or other regulatory guidance.

- (i) An unforeseeable emergency is defined as a severe financial hardship of the resulting from the following:
  - (A) an illness or accident of the Participant or Beneficiary, the Participant's or Beneficiary's spouse, or the Participant's or Beneficiary's dependent or the Participant's "primary Beneficiary";
  - (B) loss of the Participant's or Beneficiary's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster);
  - (C) the need to pay for the funeral expenses of a Participant's or Beneficiary's spouse, Participant's or Beneficiary's dependent or "primary Beneficiary" of the Participant;
  - (D) the need to pay for medical expenses of the Participant or Beneficiary, the Participant's or Beneficiary's spouse, Participant's or Beneficiary's dependent or the Participant's "primary Beneficiary" which are not reimbursed or compensated by insurance or otherwise, including non-refundable deductibles, as well as for the cost of prescription drug medication;
  - (E) the imminent foreclosure of or eviction from the Participant's or Beneficiary's primary residence; or
  - (F) other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or Beneficiary. However, except as otherwise specifically provided in this Section 6.10(a), certain circumstances are not considered an unforeseen emergency such as the purchase of a home or the payment of college tuition or credit card debt.

For purposes of this paragraph, if the Participant is not deceased, a "primary Beneficiary" shall be limited to a primary Beneficiary under the Plan, which is an individual who is named as a Beneficiary pursuant to Section 8.1 and has an unconditional right to all or a portion of the Participant's Account Balance upon the death of the Participant, and which shall not include a contingent beneficiary. Additionally, dependent shall be limited to the definition under Code Section 152(a), and, for taxable years beginning on or after January 1, 2005, without regard to Code Sections 152(b)(1), (b)(2) and (d)(1)(B).

- (ii) Unforeseeable emergency distribution standard. A distribution on account of unforeseeable emergency may not be made to the extent that such emergency is or

may be relieved through reimbursement or compensation from insurance or otherwise; by liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or by cessation of deferrals under the Plan if the cessation of deferrals would alleviate the financial need.

- (iii) Distribution necessary to satisfy emergency need. Distributions because of an unforeseeable emergency may not exceed the amount reasonably necessary to satisfy the emergency need (which may include any amounts necessary to pay any federal, State, or local income taxes or penalties reasonably anticipated to result from the distribution).
- (b) De minimis Account Balance Distributions. A Participant before Severance of Employment may request a distribution of his or her total Account Balance (excluding the rollover contribution separate account), which shall be paid in a lump sum payment as soon as practical following the direction if (i) the total Account Balance does not exceed \$5,000 (or the dollar limit under Code Section 411(a)(11), if greater), (ii) the Participant has not previously received a distribution of their total Account Balance payable to the Participant under this Section 6.10(b), and (iii) no Annual Deferral has been made with respect to the Participant during the two-year period ending immediately before the date of the distribution.

The Plan does not permit the Administrator to direct payments under the terms of this Section 6.10(b) without the Participant's consent.
- (c) Rollover Account Distributions. If a Participant has a separate account attributable to rollover contributions under the Plan, the Participant before Severance of Employment may at any time elect to receive an in-service distribution of all or any portion of the amount held in the rollover separate account.
- (d) Age 70 ½ Distributions. Prior to Severance from Employment, a Participant may withdraw all or a portion of his or her Account Balance on or after first day of the calendar year in which the Participant shall attain age 70-1/2.
- (e) Qualified Military Service Deemed Severance Distributions. The Plan does not permit "qualified military service deemed severance withdrawals".
- (f) Qualified Military Reservist Distributions. Notwithstanding any other provision of the Plan to the contrary, a Participant who is a member of a reserve component (as defined in Section 101 of Title 37 of the United States Code) who is ordered or called to active duty for a period in excess of 179 days, or for an indefinite period, may elect to receive a withdrawal of all or any portion of his or her Annual Deferrals. Any distribution made to a Participant pursuant to this Section 6.10(f) must be made during the period beginning on the date the Participant is ordered or called to active duty and ending on the close of his active duty period.

## **6.11 Qualified Distributions for Retired Public Safety Officers**

A Participant who is an "eligible retired public safety officer" may elect to have qualified health insurance premiums deducted from amounts to be distributed to the Participant from the Plan, and to have such amounts paid directly to the insurer or group health plan, subject to the provisions of this Section 6.11. "Qualified health insurance premiums" include premiums for accident and health insurance (including under a self-insured plan) or qualified long-term care insurance contracts for the Participant and the Participant's spouse and dependents. It is intended that, pursuant to Code Section 402(l), the distribution shall be excluded from the Participant's gross income to the extent that the aggregate amount of the distributions does not exceed the amount used to pay the qualified health insurance premiums of the Participant and the Participant's spouse and dependents.

- (a) A Participant shall qualify as an "eligible retired public safety officer" for purposes of this Section 6.11 only if the Participant is an individual who separated from service, either by reason of disability (as determined by the Administrator) or after attainment of normal retirement age, as a public safety officer with the Employer. Consequently, a public safety officer who retires before the attainment of normal retirement age is not an eligible retired public safety officer unless the public safety officer retires by reason of disability (as determined by the Administrator).
- (b) For purposes of this Section 6.11, the term "public safety officer" means an individual serving the Employer in an official capacity, with or without compensation, as a law enforcement officer, a firefighter, a chaplain, or as a member of a rescue squad or ambulance crew.
- (c) In order to avoid unintended taxation, the aggregate amount that a Participant elects to have directly distributed to an insurer or group health plan pursuant to this Section 6.11 for any calendar year shall be limited to \$3,000. Moreover, for purposes of applying this \$3,000 limitation, distributions with respect to the Participant that are used to pay for qualified health insurance premiums from all qualified retirement plans of the Employer shall be aggregated.

## **SECTION VII ROLLOVERS AND PLAN TRANSFERS**

### **7.1 Eligible Rollover Contributions to the Plan**

- (a) A Participant who is an Employee and who is entitled to receive an eligible rollover distribution from another "eligible retirement plan", as defined in 6.9(b) excluding the direct rollover of after-tax contributions, may request to have all or a portion of the eligible rollover distribution paid to the Plan. The Administrator may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Code Section 402 and to confirm that such plan is an "eligible retirement plan" within the meaning of Code Section 402(c)(8)(B).
- (b) If an Employee makes a rollover contribution to the Plan of amounts that have previously been distributed to him or her, the Employee must deliver to the Administrator the cash that constitutes his or her rollover contribution within 60 days of receipt of the distribution from the distributing "eligible retirement plan". Such delivery must be made in the manner prescribed by the Administrator.
- (c) The Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any "eligible retirement plan" that is an eligible governmental plan under Code Section 457(b). In addition, the Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any "eligible retirement plan" that is not an eligible governmental plan under Code Section 457(b).

### **7.2 Plan-to-Plan Transfers to the Plan**

At the direction of the Employer, the Administrator may permit Participants or Beneficiaries who are participants or beneficiaries in another eligible governmental plan under Code Section 457(b) to transfer assets to the Plan as provided in this Section 7.2. Such a transfer is permitted only if the other plan provides for the direct transfer of each Participant's or Beneficiary's interest therein to the Plan. The Administrator may require in its sole discretion that the transfer be in cash or other property acceptable to the Administrator. The Administrator may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with Code Section 457(e)(10) and Treasury Regulation Section 1.457-10(b) and to confirm that the other plan is an eligible governmental plan as defined in Treasury Regulation Section 1.457-2(f). The amount so transferred shall be credited to the Participant's Account Balance and shall be held, accounted for, administered and otherwise treated in the same manner as an Annual Deferral by the Participant under the Plan, except that the transferred amount shall not be considered an Annual Deferral under the Plan in determining the maximum deferral under Section III.

### 7.3 Plan-to-Plan Transfers from the Plan

- (a) At the direction of the Employer, the Administrator may permit Participants or Beneficiaries to elect to have all or any portion of his or her Account Balance transferred to another eligible governmental plan within the meaning of Treasury Regulatory Section 1.457-2(f), if the other eligible governmental plan provides for the receipt of transfers, the Participant or Beneficiary whose amounts deferred are being transferred will have an amount deferred immediately after the transfer at least equal to the amount deferred with respect to that Participant or Beneficiary immediately before the transfer, and the conditions of subparagraph (i), (ii), or (iii) are met.
  - (i) A transfer from the Plan to another eligible governmental plan is permitted in the case of a transfer for a Participant if the Participant has had a Severance from Employment with the Employer and is performing services for the entity maintaining the other eligible governmental plan.
  - (ii) A transfer from the Plan to another eligible governmental plan is permitted if:
    - (A) The transfer is to another eligible governmental plan within the same State as the Plan;
    - (B) All the assets held by the Plan are transferred; and
    - (C) A Participant or Beneficiary whose amounts deferred are being transferred is not eligible for additional annual deferrals in the other eligible governmental plan unless he or she is performing services for the entity maintaining the other eligible governmental plan.
  - (iii) A transfer from the Plan to another eligible governmental plan of the Employer is permitted if:
    - (A) The transfer is to another eligible governmental plan of the Employer (and, for this purpose, an employer is not treated as the Employer if the Participant's compensation is paid by a different entity); and
    - (B) A Participant or Beneficiary whose deferred amounts are being transferred is not eligible for additional annual deferrals in the other eligible governmental plan unless he or she is performing services for the entity maintaining the other eligible governmental plan.
- (b) Upon the transfer of assets under this Section 7.3, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so transferred for the Participant or Beneficiary. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section (for example, to confirm that the receiving plan is **an** eligible governmental plan under paragraph (a) of this Section 7.3, and to assure that the transfer

is permitted under the receiving plan) or to effectuate the transfer pursuant to Treasury Regulation Section 1.457-10(b).

#### **7.4 Permissive Service Credit Transfers**

- (a) If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in Code Section 414(d)) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's Account Balance transferred to the defined benefit governmental plan. A transfer under this Section 7.4(a) may be made before the Participant has had a Severance from Employment and without regard to whether the defined benefit governmental plan is maintained by the Employer. The distribution rules applicable to the defined benefit governmental plan to which any amounts are transferred under this Section 7.4 shall apply to the transferred amounts and any benefits attributable to the transferred amounts.
- (b) A transfer may be made under Section 7.4(a) only if the transfer is either for the purchase of permissive service credit (as defined in Code Section 415(n)(3)(A)) under the receiving defined benefit governmental plan, including service credit for periods for which there is no performance of services, service credited in order to provide an increased benefit for service credit which a participant is receiving under the plan, and service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in Code Section 415(n)(3)(C)(i)) of an educational organization described in Code Section 170(b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12) or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed, without application of the limitations of Code Section 415(n)(3)(B) in determining whether the transfer is for the purchase of permissive service credit, or a repayment to which Code Section 415 does not apply by reason of Code Section 415(k)(3).

## **SECTION VIII BENEFICIARY**

### **8.1 Designation**

A Participant has the right, by written notice filed with the Administrator, to designate one or more beneficiaries to receive any benefits payable under the Plan in the event of the Participant's death prior to the complete distribution of benefits. The Participant accepts and acknowledges that he or she has the burden for executing and filing, with the Administrator, a proper beneficiary designation form.

The form for this purpose shall be provided by the Administrator. The form is not valid until it is signed, filed with the Administrator by the Participant, and accepted by the Administrator. Upon the Participant filing the form and acceptance by the Administrator, the form revokes all beneficiary designations filed prior to that date by the Participant.

If no such designation is in effect upon the Participant's death, or if no designated Beneficiary survives the Participant, the Beneficiary shall be the Participant's estate.

## **SECTION IX ADMINISTRATION AND ACCOUNTING**

### **9.1 Administrator**

The Administrator shall have the responsibility and authority to control the operation and administration of the Plan in accordance with the terms of the Plan, the Code and regulations thereunder, and any State law as applicable.

The Administrator may contract with a financially responsible independent contractor to administer and coordinate the Plan under the direction of the Administrator. The Administrator shall have the right to designate a plan coordinator or other party of its choice to perform such services under this agreement as may be mutually agreed to between the Administrator and the plan coordinator or other party. Notwithstanding any other provisions to the contrary, the Administrator agrees that it shall be solely responsible to the Employer for any and all services performed by a plan coordinator, subcontractor, assignee, or designee under this agreement.

The Administrator has full and complete discretionary authority to determine all questions of Plan interpretation, policy, participation, or benefit eligibility in a manner consistent with the Plan's documents, such determinations shall be conclusive and binding on all persons except as otherwise provided by law.

### **9.2 Administrative Costs**

All reasonable expenses of administration may be paid out of the Plan assets **unless** paid (or reimbursed) by the Employer. Such expenses shall include any expenses incident to the functioning of the Administrator, or any person or persons retained or appointed by any named fiduciary incident to the exercise of his or her duties under the Plan, including, but not limited to, fees of accountants, counsel, investment managers, agents (including nonfiduciary agents) appointed for the purpose of assisting the Administrator in carrying out the instructions of Participants as to the directed investment of his or her accounts and other specialists and his or her agents, and other costs of administering the Plan. In addition, unless specifically prohibited under statute, regulation or other guidance of general applicability, the Administrator may charge to the Account Balance of an individual a reasonable charge to offset the cost of making a distribution to the Participant, Beneficiary, or Alternate Payee. If liquid assets of the Plan are insufficient to cover the fees of the Administrator, then Plan assets shall be liquidated to the extent necessary for such fees. In the event any part of the Plan assets becomes subject to tax, all taxes incurred will be paid from the Plan assets. Until paid, the expenses shall constitute a liability of the trust fund described in Section 11.1.

### **9.3 Paperless Administration**

The Administrator may use telephonic or electronic media to satisfy any notice requirements required by this Plan, to the extent permissible under regulations (or other generally applicable guidance). In addition, a Participant's consent to immediate distribution may be provided through telephonic or electronic means, to the extent permissible under regulations (or other generally



applicable guidance). The Administrator also may use telephonic or electronic media to conduct plan transactions such as enrolling participants, making (and changing) salary reduction elections, electing (and changing) investment allocations, and other transactions, to the extent permissible under regulations (or other generally applicable guidance).

## **SECTION X AMENDMENTS**

### **10.1 Amendment**

The Employer may at any time either prospectively or retroactively amend the Plan by notifying Participants of such action. The Employer shall not have the right to reduce or affect the value of any Participant's Account Balance or any rights accrued under the Plan prior to amendment.

### **10.2 Conformation**

The Employer shall amend and interpret the Plan to the extent necessary to conform to the requirements of Code Section 457 and any other applicable law, regulation or ruling, including amendments that are retroactive. In the event the Plan is deemed by the Internal Revenue Code to be administered in a manner inconsistent with Code Section 457, the Employer shall correct such inconsistency within the period provided in Code Section 457(b).

### **10.3 Plan Termination**

In the event of the termination of the Plan, all Account Balances shall be disposed to or for the benefit of each Participant or Beneficiary in accordance with the provisions of Section VI or Section VII as soon as reasonably practicable following the Plan's termination. The Employer shall not have the right to reduce or affect the value of any Participant's account or any rights accrued under the Plan prior to termination of the Plan. The Participant's or Beneficiary's written consent to the commencement of distribution shall not be required regardless of the value of his or her Account Balance.

## **SECTION XI TRUST FUND**

### **11.1 Trust Fund**

All amounts in a Participant's or Beneficiary's Account Balance, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held and invested in the Trust Fund in accordance with this Plan. The Trust Fund, and any subtrust established under the Plan, shall be established pursuant to a written agreement that constitutes a valid trust, custodial agreement, annuity contract, or similar agreement under the laws of the State. All investments, amounts, property, and rights held under the Trust Fund shall be held in trust for the exclusive benefit of Participants and their Beneficiaries and defraying reasonable expenses of the Plan and of the Trust Fund. Prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, no part of the assets **and** income of the Trust Fund may be used for, or diverted to, for purposes other than for the exclusive benefit of Participants and their Beneficiaries. The Employer has no beneficial interest in the Trust Fund and no part of the Trust Fund shall ever revert to the Employer, directly or indirectly, provided, however, that a contribution or any portion thereof made by the Employer through a mistake of fact under Section 12.4 shall upon written request of the Employer, reduced by losses attributable thereto, shall be returned to the Employer.

## **SECTION XII MISCELLANEOUS**

### **12.1 Non-Assignability**

Except as provided in Sections 12.2 and 12.3, no benefit under the Plan at any time shall be subject in any manner to anticipation, alienation, assignment (either at law or in equity), encumbrance, garnishment, levy, execution, or other legal or equitable process; and no person shall have power in any manner to anticipate, transfer, assign (either law or in equity), alienate or subject to attachment, garnishment, levy, execution, or other legal or equitable process, or in any way encumber his or her benefits under the Plan, or any part thereof, and any attempt to do so shall be void except to such extent as may be required by law.

### **12.2 Domestic Relation Orders**

The Employer shall establish reasonable procedures to determine the status of domestic relations orders and to administer distributions under domestic relations orders which are deemed to be qualified orders. Such procedures shall be in writing and shall comply with the provisions of Code Section 414(p) and regulations issued thereunder.

Notwithstanding Section 12.1, the Administrator may affect a Participant's Account Balance for a "qualified domestic relations order" as defined in Code Section 414(p), and those other domestic relations orders permitted to be so treated by the Administrator under the provisions of the Retirement Equity Act of 1984. The amount of the Participant's Account Balance shall be paid in the manner and to the person or persons so directed in the qualified domestic relations order. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan.

### **12.3 IRS Levy**

Notwithstanding Section 12.1, the Administrator may pay from a Participant's or Beneficiary's Account Balance the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service to the Plan with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

### **12.4 Mistaken Contributions**

Notwithstanding any other provision of the Plan or the Trust Fund to the contrary, in the event any contribution of an Employer is made under a mistake of fact (and not a Plan operational error), such contribution may be returned to the Employer within one year after the payment of the contribution. Earnings attributable to the excess contribution may not be returned to the Employer, but losses attributable thereto must reduce the amount to be so returned.

## **12.5 Employment**

Neither the establishment of the Plan nor any modification thereof, nor the establishment of any account, nor the payment of any benefits, shall be construed as giving to any Participant or other person any legal or equitable right against the Employer except as herein provided; and, in no event, shall the terms or employment of any Employee be modified or in any way affected hereby.

## **12.6 Successors and Assigns**

The Plan shall be binding upon and shall inure to the benefit of the Employer, its successors and assigns, all Participants and Beneficiaries and their heirs and legal representatives.

## **12.7 Written Notice**

Any notice or other communication required or permitted under the Plan shall be in writing, and if directed to the Administrator shall be sent to the designated office of the Administrator, and, if directed to a Participant or to a Beneficiary, shall be sent to such Participant or Beneficiary at his or her last known address as it appears on the Administrator's record. To the extent permitted by law, regulation or other guidance from an appropriate regulatory agency, the Administrator, Employer or any other party may provide any notice or disclosure, obtain any authorization or consent, or satisfy any other obligation under the Plan through the use of any other medium acceptable to the Administrator. Such other medium may include, but is not necessarily limited to, electronic or telephonic medium. In addition, any communication or disclosure to or from Participants or Beneficiaries that is required under the terms of the Plan to be made in writing may be provided in any other medium (electronic, telephonic, or otherwise) that is acceptable to the Administrator and permitted under applicable law.

## **12.8 Total Agreement**

This Plan and Participant deferral election, and any subsequently adopted Plan amendment thereof, shall constitute the total agreement or contract between the Employer and the Participant regarding the Plan. No oral statement regarding the Plan may be relied upon by the Participant.

## **12.9 Gender**

As used herein the masculine shall include the neuter and the feminine where appropriate.

## **12.10 Controlling Law**

This Plan is created and shall be construed, administered and interpreted in accordance with Code Section 457 and the regulations thereunder, and under laws of the State as the same shall be at the time any dispute or issue is raised. If any portion of this Plan is held illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder shall be unaffected.

**IN WITNESS WHEREOF**, the Employer has executed this Plan document this \_\_\_\_\_ day  
of \_\_\_\_\_,

City of Lodi

SEAL

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Attest:

\_\_\_\_\_  
Title (Witness)



## 457(b) PLAN DOCUMENT CERTIFICATION

**This form must be submitted to The Hartford along with your signed Specimen document.**

Employer Name: City of Lodi																	
Plan Name: City of Lodi Deferred Compensation Plan																	
Effective Date of Plan: December 31, 2011      Hartford Group Number: 109402																	
<p>Please select one of the following below:</p> <p><input type="checkbox"/> I, the undersigned employer representative, certify that the employer has adopted The Hartford's specimen 457(b) Plan Document without any modifications and have provided The Hartford with a copy of the adopted plan document.</p> <p><input type="checkbox"/> I, the undersigned employer representative, certify that the employer has adopted The Hartford's specimen 457(b) Plan Document <u>with</u> modifications and have provided The Hartford with a copy of the adopted document. I understand that the modifications will need to be approved by The Hartford to ensure that they conform to our Contract and Administrative Services Agreement with The Hartford, and their record keeping system and product. The provisions we have modified are as follows:</p> <table style="width: 100%; border: none;"><thead><tr><th style="text-align: left; border-bottom: 1px solid black; width: 45%;">Plan Selections</th><th style="text-align: left; border-bottom: 1px solid black; width: 55%;">Modifications</th></tr></thead><tbody><tr><td> </td><td> </td></tr><tr><td> </td><td> </td></tr><tr><td> </td><td> </td></tr><tr><td> </td><td> </td></tr><tr><td> </td><td> </td></tr><tr><td> </td><td> </td></tr><tr><td> </td><td> </td></tr></tbody></table>		Plan Selections	Modifications														
Plan Selections	Modifications																
Name of Authorized Signer: (please print)																	
Signature:	Date:																

RESOLUTION NO. 2011-192

A RESOLUTION OF THE LODI CITY COUNCIL  
APPROVING REVISED DEFERRED COMPENSATION  
PLAN DOCUMENTS WITH NATIONWIDE RETIREMENT  
SOLUTIONS

=====

WHEREAS, the City of Lodi has previously adopted a Deferred Compensation Plan with administration by Nationwide Retirement Solutions; and

WHEREAS, revisions to the Deferred Compensation Plan are required by virtue of enacted federal legislation; and

WHEREAS, Nationwide Retirement Solutions has provided a revised plan document for City execution.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lodi does hereby authorize the City Manager to execute a revised Deferred Compensation Plan document with Nationwide Retirement Solutions.

Dated: December 21, 2011

=====

I hereby certify that Resolution No. 2011-192 was passed and adopted by the City Council of the City of Lodi in a regular meeting held December 21, 2011, by the following votes:

AYES: COUNCIL MEMBERS – Hansen, Katzakian, Nakanishi, and  
Mayor Mounce

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – Johnson

ABSTAIN: COUNCIL MEMBERS – None



RANDI JOHL

City Clerk



RESOLUTION NO. 2011-193

A RESOLUTION OF THE LODI CITY COUNCIL  
APPROVING REVISED DEFERRED COMPENSATION  
PLAN DOCUMENTS WITH THE HARTFORD

=====

WHEREAS, the City of Lodi has previously adopted a Deferred Compensation Plan with administration by The Hartford; and

WHEREAS, revisions to the Deferred Compensation Plan are required by virtue of enacted federal legislation; and

WHEREAS, The Hartford has provided a revised plan document for City execution.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lodi does hereby authorize the City Manager to execute a revised Deferred Compensation Plan document with The Hartford.

Dated: December 21, 2011

=====

I hereby certify that Resolution No. 2011-193 was passed and adopted by the City Council of the City of Lodi in a regular meeting held December 21, 2011, by the following votes:

AYES: COUNCIL MEMBERS – Hansen, Katzakian, Nakanishi, and  
Mayor Mounce

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – Johnson

ABSTAIN: COUNCIL MEMBERS – None

  
RANDI JOHL  
City Clerk